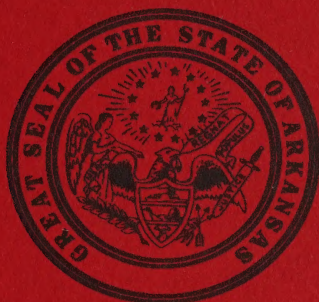


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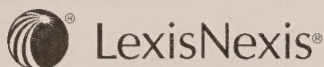
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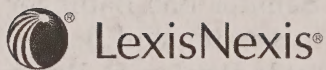
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TITLE 12

LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS

(CHAPTERS 60-88 IN VOLUME 8B)

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER.

1. GENERAL PROVISIONS.

SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS

CHAPTER.

6. GENERAL PROVISIONS.
8. DIVISION OF ARKANSAS STATE POLICE.
9. LAW ENFORCEMENT OFFICER TRAINING AND STANDARDS.
10. COMMUNICATIONS SYSTEMS.
11. PREVENTION OF PUBLIC OFFENSES.
12. CRIME REPORTING AND INVESTIGATIONS.
13. FIRE PREVENTION.
14. STATE CAPITOL POLICE.
15. WEAPONS.
18. CHILD MALTREATMENT ACT.
19. HUMAN TRAFFICKING — PREVENTION AND LAW ENFORCEMENT.

SUBTITLE 3. CORRECTIONAL FACILITIES AND PROGRAMS

CHAPTER.

26. CRIMINAL DETENTION FACILITIES STANDARDS.
27. DIVISION OF CORRECTION — DIVISION OF COMMUNITY CORRECTION.
28. STATE CORRECTIONAL FACILITIES.
29. INMATES OF STATE FACILITIES.
30. STATE INMATE INDUSTRIES AND LABOR.
32. TREATMENT OF FEMALE INMATES OR DETAINEES.
41. LOCAL CORRECTIONAL FACILITIES.
42. LABOR OF COUNTY AND CITY PRISONERS.
50. CORRECTIONS COOPERATIVE ENDEAVORS AND PRIVATE MANAGEMENT ACT.
51. INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION.

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 12-1-102. Records to be posted on a public website.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-1-102. Records to be posted on a public website.

(a) Relevant research studies and reports concerning the following topics that are generated by the research divisions of the Division of Correction, the Division of Community Correction, and the Parole Board or by third-party contractors on behalf of the Division of Correction, the Division of Community Correction, and the board, when applicable, shall be posted on the Division of Correction's, the Division of Community Correction's, or the board's website:

- (1) Population projections;
- (2) Recidivism; and
- (3) Evaluation of the cost-benefit of evidence-based practices of:
 - (A) Adult prisons;
 - (B) Community corrections facilities;
 - (C) Probation; and
 - (D) Parole.

(b) Data posted on the board's, the Division of Correction's, or the Division of Community Correction's websites under this section may be removed from the board's, the Division of Correction's, or the Division of Community Correction's websites after five (5) years.

History. Acts 2015, No. 1265, § 2; 2019, No. 910, § 699.

Amendments. The 2019 amendment substituted "Division of Correction" for

"Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS

CHAPTER 6

GENERAL PROVISIONS

SUBCHAPTER.

6. LOCAL CRIMINAL JUSTICE COORDINATING COMMITTEES.
7. LAW ENFORCEMENT AGENCIES IN GENERAL.

SUBCHAPTER 6 — LOCAL CRIMINAL JUSTICE COORDINATING COMMITTEES

SECTION.

12-6-601. Local criminal justice coordinating committees.

12-6-601. Local criminal justice coordinating committees.

(a) The General Assembly finds that the investment of state or federal funding for the operation of a crisis stabilization unit under the Behavioral Health Crisis Intervention Protocol Act of 2017, § 20-47-801 et seq., necessitates efficient expenditure of the state or federal funds.

(b) The General Assembly encourages the establishment of local criminal justice coordinating committees composed of local judges, local corrections officials, the prosecuting attorney, law enforcement officials, county officials, medical professionals, and mental health professionals.

(c) A local criminal justice coordinating committee may be created under this section and shall:

(1) Periodically review data and records of local and regional detention facilities collected under § 12-12-219 and data concerning a local crisis intervention team and crisis stabilization unit, when applicable;

(2) Assist in the access and transfer of data described under subdivision (c)(1) of this section; and

(3) Recommend protocols for the efficient and effective use of local criminal justice resources, and a crisis intervention team or crisis stabilization unit, when applicable.

History. Acts 2017, No. 423, § 6.

SUBCHAPTER 7 — LAW ENFORCEMENT AGENCIES IN GENERAL

SECTION.

12-6-701. Confidentiality of certain law

enforcement records —
Definitions.

Effective Dates. Acts 2017, No. 531, § 3: Mar. 20, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is of public interest to protect the privacy of the family members of a deceased law enforcement officer; that currently, there are no safeguards or procedures in place to ensure that a recording that depicts the death of a law enforcement officer is released in a proper, respectful, and authorized manner; and that this act is immediately necessary because it provides a balanced procedure to

achieve proper release of a video or audio recording that depicts a law enforcement officer's death while taking into account the privacy belonging to the family members of the deceased law enforcement officer. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-6-701. Confidentiality of certain law enforcement records — Definitions.

(a) As used in this section:

(1) "Access a record" means to view a photograph or video recording or to listen to an audio recording;

(2) "Custodian of the record" means a person identified by the governmental entity that possesses the record and is responsible for safeguarding and providing access to the record;

(3) "Death of a law enforcement officer" means all acts or events that caused or otherwise relate to the death of a law enforcement officer who was acting in the course of his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that caused or otherwise relate to the death;

(4) "Family member" means a spouse, biological or adopted child, parent, or sibling of the deceased law enforcement officer;

(5) "Law enforcement officer" means a person vested by law with a duty to maintain public order and to make arrests for offenses;

(6)(A) "Notice" means that from all the facts and circumstances known to the person at the time, the person has reason to know that the facts and circumstances exist.

(B) Notice may be communicated in person or through other means, including without limitation, by telephone, telegraph, teletype, telecopier, facsimile, or other form of wire or wireless communication, or by mail or private carrier; and

(7) "Record" means a photograph, video recording, or audio recording, including any audio or video footage captured on a body-worn camera or a dashboard camera.

(b)(1) A record that depicts or records the death of a law enforcement officer is confidential and exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2)(A) However, a family member of the deceased law enforcement officer may access a record described in subdivision (b)(1) of this section.

(B) A minor child of a deceased law enforcement officer who is at least fourteen (14) years of age may access a record described in subdivision (b)(1) of this section if the parent or guardian of the child:

(i) Provides written consent to the custodian of the record to permit the child to access a record; and

(ii) Is present to provide supervision over the child as he or she accesses a record.

(c)(1) The custodian of a record shall not permit a person not authorized under this section to copy, disseminate, reproduce, transmit, or access a record described in subdivision (b)(1) of this section.

(2) The access to a record described in subdivision (b)(1) of this section or other handling of a record described in subdivision (b)(1) of this section shall be under the direct supervision of the custodian of the record.

(3) A person or persons designated as the custodian of a record who knowingly violates this section upon conviction is guilty of a Class D felony.

(d)(1)(A) A person or entity may petition a circuit court in the county where a record described in subdivision (b)(1) of this section is physically located in order to obtain access to the record.

(B) At a hearing held on a petition filed with the circuit court under subdivision (d)(1)(A) of this section seeking access to a record described in subdivision (b)(1) of this section, any review of a record described in subdivision (b)(1) of this section shall be conducted in camera.

(2) Upon a showing of good cause, a circuit court may issue an order authorizing a person or entity under subdivision (d)(1) of this section to access a record described in subdivision (b)(1) of this section and may prescribe restrictions or stipulations pertaining to the access of the record that the circuit court deems appropriate, including whether to allow for the copying or public disclosure of a record described in subdivision (b)(1) of this section.

(3) In determining good cause under subdivision (d)(2) of this section, the circuit court shall consider the following factors, along with other factors that the circuit court may deem relevant:

(A) Whether access to the record described in subdivision (b)(1) of this section is necessary for the public evaluation of a law enforcement officer's conduct during the performance of his or her official duties;

(B) Whether there is a compelling public interest in the disclosure of the record;

(C) The seriousness of the intrusion into the privacy of the deceased law enforcement officer's family members; and

(D) The availability of similar information in other forms.

(4)(A) A custodian of a record described in subdivision (b)(1) of this section shall be given notice of:

(i) A petition filed with a circuit court to access a record described in subdivision (b)(1) of this section; and

(ii) The opportunity to be present and heard at any hearing on the matter.

(B) In addition to custodian notification under subdivision (d)(4)(A) of this section, the following people shall be provided notice described in subdivisions (d)(4)(A)(i) and (d)(4)(A)(ii) of this section:

(i) The surviving spouse of the deceased law enforcement officer, if any;

(ii) If the deceased law enforcement officer has no surviving spouse, the parents of the deceased law enforcement officer, if any; or

(iii) If the deceased law enforcement officer has no surviving parents and no surviving spouse, the adult children of the deceased law enforcement officer.

(e) This section does not:

(1) Prohibit a judge, jury, attorney, court personnel, or other persons necessary to a criminal, civil, or administrative proceeding involving the death of a law enforcement officer from viewing a record described in subdivision (b)(1) of this section;

(2) Overturn, abrogate, or alter a court order that exists on March 20, 2017, that restricts, limits, or grants access to a record described in subdivision (b)(1) of this section;

(3)(A)(i) Prohibit a law enforcement agency involved in an official investigation of a death of a law enforcement officer, including without limitation, the law enforcement agency by whom the deceased law enforcement officer was employed at the time of his or her death, the Division of Arkansas State Police, and the Federal Bureau of Investigation, from obtaining a record described in subdivision (b)(1) of this section for the purpose of conducting an official investigation pertaining to the death of a law enforcement officer.

(ii) However, a record used during an official investigation under subdivision (e)(3)(A)(i) of this section shall not be reproduced, transmitted, or disseminated for any purpose not authorized under this section.

(B)(i) This section does not prohibit the law enforcement agency by whom the deceased law enforcement officer was employed from using a record described in subdivision (b)(1) of this section for law enforcement officer training or internal review.

(ii) However, a record used for the purpose of law enforcement officer training or internal review under subdivision (e)(3)(B)(i) of this section shall not be reproduced, transmitted, or disseminated for any purpose not authorized under this section.

(C)(i) This section does not prohibit the use of a record described in subdivision (b)(1) of this section for law enforcement officer training conducted by an entity authorized to conduct law enforcement training, including without limitation:

(a) The Black River Technical College Law Enforcement Training Academy;

(b) The Criminal Justice Institute;

(c) The Arkansas Law Enforcement Training Academy; or

(d) Other law enforcement officer training programs.

(ii) However, a record used for law enforcement officer training purposes under subdivision (e)(3)(C)(i) of this section shall not be reproduced, transmitted, or disseminated for any purpose not authorized under this section; or

(4)(A) Prohibit a prosecuting attorney, deputy prosecuting attorney, defense counsel pursuant to a motion of discovery, their staff, or attorneys involved in civil litigation involving the death of a law enforcement officer from accessing or copying a record described in subdivision (b)(1) of this section.

(B) A record accessed or copied under subdivision (e)(4)(A) of this section shall not be reproduced, transmitted, or disseminated for any purpose not authorized under this section.

History. Acts 2017, No. 531, § 2.

A.C.R.C. Notes. Acts 2017, No. 531, § 1, provided: "Legislative findings and determinations. The General Assembly finds and determines that:

"(1) The nature of a profession in law enforcement is inherently dangerous, with law enforcement officers frequently facing life threatening situations;

"(2) During the course of his or her duties, a law enforcement officer routinely relies on audio and video recording devices to record his or her movements and actions;

"(3) Due to the inherently dangerous nature of a profession in law enforcement, a law enforcement officer's death that occurs in the line of duty is likely to be captured and depicted on an audio or video recording device;

"(4) Absent a compelling public interest, or the necessity to evaluate a law enforcement officer's conduct, or an official purpose such as a criminal, civil, or administrative proceeding or an official investigation into a law enforcement officer's death, the disclosure of an audio or visual depiction of the death of a law enforcement officer would have little value to the public other than to satisfy a

morbid curiosity concerning the death of a law enforcement officer;

"(5) Presently, there are audio and video recordings that depict the death of a law enforcement officer available in various public forums for viewing and sharing which have the potential to encourage copycat acts of violence against law enforcement officers and to incite other acts of violence against law enforcement officers, and which also subject the surviving family members of the deceased law enforcement officer to viewing the murder or death of their family member on television, internet, social media, and other publically accessible forums — causing the surviving family members to relive the pain associated with the death and allowing the public to view and publically share with others sensitive depictions of the final moments and death of their family member — thereby invading the privacy of the deceased law enforcement officer's family; and

"(6) It is the intent of this act to:

"(A) Protect the privacy belonging to family members of a deceased law enforcement officer; and

"(B) Discourage copycat acts of violence or other similar forms of violence against law enforcement officers."

CHAPTER 8

DIVISION OF ARKANSAS STATE POLICE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. POLICE OFFICERS.
3. DIVISION OF ARKANSAS STATE POLICE COMMUNICATIONS EQUIPMENT LEASING ACT.
4. ARKANSAS SPEED TRAP LAW.
5. CRIMES AGAINST CHILDREN DIVISION.
6. DIVISION OF ARKANSAS STATE POLICE HEADQUARTERS FACILITIES AND EQUIPMENT FINANCING ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-8-101. Division of Arkansas State Police created.
- 12-8-102. Commission created — Members — Meetings — Elective office.
- 12-8-103. Commission's powers and duties — Restrictions.
- 12-8-104. Director.
- 12-8-105. Officers and members — Oath.
- 12-8-106. Division of Arkansas State Police — Duties and powers — Restrictions — Municipal police barred from patrolling certain highways.
- 12-8-107. Arrests and detentions.
- 12-8-108. Security of Governor, capitol building, etc.
- 12-8-109. Police protection for statewide functions.

SECTION.

- 12-8-110. Deputizing citizens in emergency.
- 12-8-111. Cooperation among agencies.
- 12-8-112. Headquarters — Identification Bureau.
- 12-8-113. Drug Abuse Enforcement Unit — Hot line.
- 12-8-114. Legal counsel and advisors.
- 12-8-115. Physicians and surgeons.
- 12-8-116. Motor vehicles.
- 12-8-118. Payment of salaries and expenses.
- 12-8-119. Police training school.
- 12-8-120. Background investigations.
- 12-8-121. Use of state uniform, patch, or logo prohibited.
- 12-8-125. Small Municipality Law Enforcement Vehicle Grant Program.

Effective Dates. Acts 2019, No. 82, § 23: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the General Improvement Fund should no longer be utilized; that the Development and Enhancement Fund is necessary to complete unfinished state projects; and that this act is necessary to address infrastructure needs and unanticipated needs of the State of Arkansas. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this

act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-8-101. Division of Arkansas State Police created.

(a) There is created the Division of Arkansas State Police for the purposes of enforcing the motor vehicle laws, traffic laws, and other state laws relating to protecting and properly maintaining the state highway system of the State of Arkansas and to render more effective the apprehension of criminals and the enforcement of criminal law.

(b) The police officers provided for in this chapter shall be known as "Arkansas State Police".

History. Acts 1945, No. 231, § 1; A.S.A. substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a).
1947, § 42-401; Acts 2019, No. 910, § 5757.

Amendments. The 2019 amendment

12-8-102. Commission created — Members — Meetings — Elective office.

(a) The Arkansas State Police Commission is created and established.

(b)(1) The commission shall be composed of seven (7) members to be appointed by the Governor for terms of seven (7) years, by and with the advice and consent of the Senate.

(2)(A) Four (4) members shall be appointed from each of the four (4) congressional districts and three (3) shall be appointed from the state at large.

(B) However, no more than two (2) members shall be appointed from any congressional district.

(c)(1) When vacancies occur in the commission, the Governor may temporarily fill the position consistent with subsection (b) of this section until the Senate is next in session.

(2) All appointments made at any time other than on the day following the expiration of a term shall be for the unexpired portion of the term.

(d) The commission shall meet and organize, electing one (1) member as chair and one (1) member as secretary.

(e) The chair shall have the power to convene the commission at such time as he or she may deem proper after due notice thereof to all the members of the commission.

(f) The commission is directed to hold a minimum of one (1) meeting per month.

(g) Except for those absences due to illness of the commissioner, failure of any commissioner to attend three (3) consecutive meetings shall constitute cause for removal from office by the Governor.

(h)(1) A majority of the members of the commission shall constitute a quorum to transact any business properly brought before it and not inconsistent with the provisions of this chapter.

(2) A quorum may do and perform other duties as are prescribed in this chapter or that may be necessary for the proper enforcement of this chapter.

(i) Members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(j)(1) No member of the commission shall be eligible to hold or run for any elective office, either state or county, during the time he or she shall serve as a member of the commission.

(2) Any violation of subdivision (j)(1) of this section shall constitute cause for removal by the Governor.

History. Acts 1945, No. 231, §§ 2, 3; 1949, No. 157, § 1; 1953, No. 74, § 1; 1969, No. 394, § 1; 1975 (Extended Sess., 1976), No. 1035, § 1; 1981, No. 540, § 9; A.S.A. 1947, §§ 6-616, 42-402, 42-403, 42-403.1; reen. Acts 1987, No. 862, § 1; 1991, No. 1099, § 12; 1991, No. 1223, § 1; 1997, No. 250, § 64; 1999, No. 149, § 1; 2017, No. 250, § 1.

Amendments. The 2017 amendment deleted (b)(3).

12-8-103. Commission's powers and duties — Restrictions.

(a) The Arkansas State Police Commission shall:

(1) Approve or disapprove each promotion;

(2) Approve or disapprove each demotion for nondisciplinary reasons; and

(3) Review each application for employment presented to it by the Director of the Division of Arkansas State Police for certification to the eligibility list.

(b)(1) The commission shall hear appeals of any disciplinary action taken against a commissioned officer by the director that results in removal, suspension, discharge, demotion, or disciplinary transfer.

(2) The appeal shall be heard under § 12-8-204(c).

(c) The members of the commission are granted disciplinary authority equal to that of supervisory and administrative personnel of the Division of Arkansas State Police with respect to violations of rules committed by a division employee in the presence of a commissioner.

(d)(1) In addition to its existing powers and duties, the commission may administer oaths and subpoena witnesses, books, records, and other documents deemed necessary for the proper investigation and performance of any powers, functions, or duties of the commission.

(2) All such subpoenas shall be issued by the chair of the commission or such other members of the commission as authorized by a majority vote of the membership of the commission.

(3)(A) Any person failing to appear or to produce the books, records, or documents subpoenaed by the commission shall be guilty of contempt.

(B) The person shall be punished by the circuit court upon petition being filed with the circuit court by the commission in the same manner as provided by law for punishment of contempt of the circuit court.

(e)(1) The commission shall perform the duties prescribed in this chapter.

(2) For such purposes, the commission may promulgate and enforce reasonable and necessary rules.

(f) Members of the commission shall not exercise police powers, nor shall the appointment qualify a commissioner as a law enforcement officer as defined in § 12-9-102.

History. Acts 1945, No. 231, § 2; 1949, No. 157, § 1; 1953, No. 74, § 1; 1981, No. 45, § 2; 1981, No. 540, §§ 10, 11; A.S.A. 1947, §§ 42-401.1, 42-402, 42-403.2, 42-403.3; Acts 2001, No. 1697, § 1; 2005, No. 666, § 1; 2019, No. 315, §§ 844, 845; 2019, No. 910, §§ 5758, 5759.

Amendments. The 2019 amendment

by No. 315 deleted “and regulations” following “rules” in (c); and deleted “and regulations” following “rules” in (e)(2).

The 2019 amendment by No. 910 substituted “Division of Arkansas State Po-

lice” for “Department of Arkansas State Police” in (a)(3) and (c); and substituted “division” for “department” in (c).

12-8-104. Director.

(a)(1)(A) After conferring with the members of the Arkansas State Police Commission, the Governor shall appoint a Director of the Division of Arkansas State Police who shall be the executive and administrative head of the Division of Arkansas State Police and shall receive a salary as fixed by law.

(B) The Director of the Division of Arkansas State Police shall serve at the pleasure of the Governor.

(C) The Director of the Division of Arkansas State Police shall report to the Secretary of the Department of Public Safety.

(2) The Director of the Division of Arkansas State Police shall be of good moral character and a resident and a qualified elector of the State of Arkansas.

(3) In addition to all other qualifications contained in this section, the Director of the Division of Arkansas State Police, at the time of appointment to the position of Director of the Division of Arkansas State Police, shall either:

(A) Be a college graduate with at least a bachelor’s degree in criminology, business administration, or a related field;

(B) Have graduated from a standard high school or vocational school and have eight (8) years’ previous experience in law enforcement or a related field with considerable supervisory and administrative experience; or

(C) Have at least ten (10) years’ experience in law enforcement.

(b) The Director of the Division of Arkansas State Police shall determine the number of other officers and patrol personnel to be employed by the Division of Arkansas State Police, and they shall be paid salaries according to rank, not exceeding the salaries provided.

(c) The Director of the Division of Arkansas State Police shall promulgate such rules as are necessary for the efficient operation of the Division of Arkansas State Police and for the enforcement of such duties as are prescribed in this chapter.

(d) The Director of the Division of Arkansas State Police shall keep the books and records of the Division of Arkansas State Police, which shall be audited as the books and accounts of other state departments.

(e) An annual report to the secretary and a biannual report to the General Assembly showing the activities, number of arrests, amounts collected by the Division of Arkansas State Police, and disposition of all cases shall be made by the Director of the Division of Arkansas State Police.

(f)(1) The Director of the Division of Arkansas State Police shall have supervision and control for the purpose of discipline and proper

management of all the members and employees of the Division of Arkansas State Police.

(2)(A) The Director of the Division of Arkansas State Police may designate that some or all employees of the Division of Arkansas State Police be trained pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration laws on federal and interstate highways in the State of Arkansas.

(B) The amount spent for training employees of the Division of Arkansas State Police under the memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security shall be paid in accordance with the provisions of § 12-8-118.

(3)(A) Upon request of the Director of State Highways and Transportation, the Director of the Division of Arkansas State Police may designate certified law enforcement officers from the Arkansas Highway Police Division of the Arkansas Department of Transportation to be trained under the terms of the memorandum of understanding described in subdivision (f)(2) of this section.

(B) The amount spent for training certified law enforcement officers from the Arkansas Highway Police Division of the Arkansas Department of Transportation shall be paid by the Arkansas Department of Transportation.

(g) The Director of the Division of Arkansas State Police may establish such divisions within the ranks of the Division of Arkansas State Police as he or she may deem necessary and proper.

(h) Whenever in the Director of the Division of Arkansas State Police's discretion the action is necessary for the efficient operation of the Division of Arkansas State Police, the Director of the Division of Arkansas State Police may:

(1) Transfer, assign, and reassign from one division to another division any member of the Division of Arkansas State Police or other employee of the Division of Arkansas State Police; or

(2)(A) Subject to the approval of the commission, promote or demote in rank any member of the Division of Arkansas State Police.

(B) However, any demotion pursuant to subdivision (h)(2)(A) of this section shall be for nondisciplinary reasons.

(i) Due to the exacting and special duties of the Director of the Division of Arkansas State Police, he or she may draw an expense allowance in an amount not to exceed six hundred dollars (\$600) per month.

(j)(1) Subject to the provisions of subsection (f) of this section, the Director of the Division of Arkansas State Police may negotiate the terms of a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration laws.

(2)(A) The memorandum of understanding described in subdivision (j)(1) of this section must be signed on behalf of the State of Arkansas by the Director of the Division of Arkansas State Police, the Governor, and the Director of the Division of Law Enforcement Standards and Training.

(B) Prior to the signing provided for by subdivision (j)(2)(A) of this section, the memorandum of understanding shall be reviewed by the Legislative Council.

(k) The Director of the Division of Arkansas State Police shall implement or assist other entities to develop and implement a public service campaign concerning racial profiling and may utilize brochures, flyers, or public service announcements.

History. Acts 1945, No. 231, §§ 4, 14, 21; 1968 (1st Ex. Sess.), No. 65, § 1; A.S.A. 1947, §§ 42-404, 42-414, 42-421; Acts 1987, No. 1037, § 13; 1989 (1st Ex. Sess.), No. 285, § 11; 2001, No. 750, § 1; 2001, No. 1697, § 2; 2005, No. 665, § 1; 2005, No. 907, § 1; 2005, No. 2136, § 2; 2007, No. 1048, § 1; 2011, No. 779, § 1; 2017, No. 707, § 15; 2019, No. 910, § 5760.

Amendments. The 2017 amendment substituted “Department of Transportation” for “State Highway and Transportation Department” once in (f)(3)(A) and

twice in (f)(3)(B); and substituted “paid” for “borne” in (f)(3)(B).

The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” throughout the section; inserted (a)(1)(C); substituted “secretary” for “Governor” in (e); and substituted “Director of the Division of Law Enforcement Standards and Training” for “Director of the Law Enforcement Standards and Training” in (j)(2)(A).

12-8-105. Officers and members — Oath.

(a) Before entering upon their duties, all members and officers of the Division of Arkansas State Police shall take the oath as now provided by law for public officials.

(b) The Director of the Division of Arkansas State Police shall take the additional oath that he or she will not be either directly or indirectly interested in any purchase made by or for the division.

(c) Any violation of oath shall constitute perjury and upon conviction shall be punished accordingly.

(d) The oath provided for in this section shall be filed in duplicate, the original filed with the division and a copy with the Secretary of the Arkansas State Police Commission.

History. Acts 1945, No. 231, § 14; A.S.A. 1947, § 42-414; Acts 2001, No. 1697, § 3; 2019, No. 910, § 5761.

Amendments. The 2019 amendment substituted “Division of Arkansas State

Police” for “Department of Arkansas State Police” in (a) and (b); substituted “division” for “department” in (b) and (d); and made a stylistic change.

12-8-106. Division of Arkansas State Police — Duties and powers — Restrictions — Municipal police barred from patrolling certain highways.

(a)(1) It shall be the duty of the Division of Arkansas State Police to:

(A) Patrol the public highways, make arrests, and enforce the laws of this state relating to motor vehicles and the use of the state highways;

(B) Establish, maintain, and enforce a towing rotation list to assist in clearing highways of motor vehicles which have been involved in accidents or abandoned;

(C) Assist in the collection of delinquent motor vehicle license taxes and the collection of gasoline and other taxes that are required by law; and

(D) Determine when, if possible, a person or persons are the cause of injury to any state highway or other state property and arrest all persons criminally responsible for injury to any state highway or other state property and bring them before the proper officer for trial.

(2) The Director of the Division of Arkansas State Police may promulgate necessary rules to carry out the purpose and intent of subdivision (a)(1)(B) of this section.

(b) The Division of Arkansas State Police shall be conservators of the peace and as such shall have the powers possessed by police officers in cities and county sheriffs in counties, except that the Division of Arkansas State Police may exercise such powers anywhere in this state.

(c) The Division of Arkansas State Police shall have the authority to establish a Crimes Against Children Division, either through transfer or by contract, to conduct child abuse investigations, to administer the Child Abuse Hotline, and, when consistent with rules promulgated by the Division of Arkansas State Police, to provide training and technical assistance to local law enforcement in conducting child abuse investigations.

(d) The police officers shall have all the power and authority of the State Fire Marshal and shall assist in making investigations of arson, § 5-38-301, and such other offenses as the director may direct and shall be subject to the call of the circuit courts of the state and the Governor.

(e) However, this chapter shall not be construed so as to take away any authority of the regularly constituted peace officers in the state, but the Division of Arkansas State Police shall cooperate with them in the enforcement of the criminal laws of the state and assist such officers either in the enforcement of the law or apprehension of criminals.

(f) Nothing in this chapter shall be construed as to authorize any officer of the Division of Arkansas State Police to serve writs unless they are specifically directed to the Division of Arkansas State Police, or an officer thereof, by the issuing authority.

(g) No officer or member of the Division of Arkansas State Police shall ever be used in performing police duties on private property in connection with any strike, lockout, or other industrial disturbance.

(h)(1)(A) The following law enforcement officers are prohibited from patrolling controlled-access facilities except as may be authorized by the director:

(i) A municipal police officer;

(ii) An officer established under § 14-42-401 et seq. [repealed];

(iii) A city marshal; and

(iv) A constable.

(B) The director may withdraw any previously issued authorization to patrol controlled-access facilities.

(C)(i) The director shall promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to establish criteria for granting or withdrawing authorization to patrol controlled-access facilities.

(ii) In adopting the rules described in subdivision (h)(1)(C)(i) of this section, the director at a minimum shall take into consideration the following factors:

(a) Public safety;

(b) Training of the law enforcement officers;

(c) Size of the law enforcement agency;

(d) Financial impact;

(e) Abuse of police power; and

(f) The types of roadways or highways that are controlled-access facilities for purposes of this section.

(2) The following law enforcement officers may patrol any service roads that are within their jurisdiction situated adjacent to controlled-access facilities:

(A) A municipal police officer;

(B) An officer established under § 14-42-401 et seq. [repealed];

(C) A city marshal; and

(D) A constable.

(3) This subsection shall not prohibit a municipal police officer, an officer established under § 14-42-401 et seq. [repealed], a city marshal, or a constable from responding to an accident or other emergency on a controlled-access facility.

History. Acts 1945, No. 231, §§ 7, 8; 1963, No. 133, § 1; A.S.A. 1947, §§ 42-407, 42-408; Acts 1987, No. 509, § 1; 1997, No. 1240, § 7; 2001, No. 254, § 1; 2001, No. 441, § 1; 2001, No. 1697, § 4; 2007, No. 371, § 1; 2011, No. 741, § 1; 2019, No. 315, §§ 846, 847; 2019, No. 910, §§ 5762-5765.

A.C.R.C. Notes. Acts 2019, No. 150, § 1, repealed § 14-42-401 et seq.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a)(2); and substituted “rules” for “regulations” in (c).

The 2019 amendment by No. 910, throughout the section, substituted “Division of Arkansas State Police” for “Department of Arkansas State Police”, and substituted “Division of Arkansas State Police” for “department”.

12-8-107. Arrests and detentions.

(a) If any officer of the Division of Arkansas State Police delivers an arrested person to a county jail for detention, it shall be the duty of the jailer to receive the prisoner.

(b) The division officer may notify the county sheriff or prosecuting officer of the county in which the crime was committed of the arrest and detention of the prisoner and make such lawful disposition of the

prisoner as the division officer is directed to do by the county sheriff or prosecuting officer.

History. Acts 1945, No. 231, § 8; A.S.A. 1947, § 42-408; Acts 2001, No. 1697, § 5; 2019, No. 910, § 5766.

Amendments. The 2019 amendment substituted “Division of Arkansas State

Police” for “Department of Arkansas State Police” in (a); and substituted “division officer” for “department officer” twice in (b).

12-8-108. Security of Governor, capitol building, etc.

(a) The Division of Arkansas State Police shall be responsible for the safety and security of the:

- (1) Governor and his or her family;
- (2) Lieutenant Governor and his or her family;
- (3) Governor’s Mansion and mansion grounds; and
- (4) State Capitol Building and State Capitol grounds.

(b) The division is authorized to assign officers of the division in such numbers and to such locations as is necessary to carry out the responsibility imposed on the division by this section.

(c) Data, records, surveillance footage, security procedures, emergency plans, and other information compiled or possessed by the division concerning the Governor’s Mansion and mansion grounds are confidential and not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1973, No. 422, § 1; A.S.A. 1947, § 5-914.1; Acts 2017, No. 483, § 1; 2019, No. 910, § 5767.

Amendments. The 2017 amendment added (c).

The 2019 amendment substituted “Division of Arkansas State Police” for “De-

partment of Arkansas State Police” in the introductory language of (a); and substituted “division” for “department” three times in (b), and in (c).

12-8-109. Police protection for statewide functions.

(a) The Division of Arkansas State Police shall provide police protection, commensurate with the available personnel and resources of the division that are not required for other activities, benefiting any statewide function or similar activities sponsored or conducted by:

- (1) A state agency, board, or commission;
- (2) A state-supported college or university;
- (3) A private nonprofit association or organization on public property; or
- (4) Statewide athletic events under the auspices of the public schools.

(b) For the purposes of this section, the statewide functions for which the division may provide police protection at the Arkansas State Fair and Livestock Showgrounds shall include the annual Arkansas State Fair and Livestock Show held at the showgrounds, and statewide athletic contests in which the public schools of this state participate which are held at the showgrounds.

History. Acts 1973, No. 430, § 1; A.S.A. 1947, § 42-407.1; Acts 2019, No. 910, § 5768.

Amendments. The 2019 amendment substituted "Division of Arkansas State

Police" for "Department of Arkansas State Police" in the introductory language of (a); and substituted "division" for "department" in the introductory language of (a), and in (b).

12-8-110. Deputizing citizens in emergency.

Any Division of Arkansas State Police officer shall have the authority in case of emergency to call upon and deputize any reputable citizen of the state for assistance whenever it is deemed necessary for the proper enforcement of the law.

History. Acts 1945, No. 231, § 13; A.S.A. 1947, § 42-413; Acts 2019, No. 910, § 5769.

Amendments. The 2019 amendment

substituted "Division of Arkansas State Police" for "Department of Arkansas State Police".

12-8-111. Cooperation among agencies.

(a) It shall be the duty of the Division of Arkansas State Police and its officers to cooperate with other law enforcement agencies of this state in the investigation and apprehension of criminals and the prevention of crime within the state and to use every means at their disposal in disseminating information that will more effectively expedite the detection of crime and the apprehension and conviction of criminals and promote the highest possible degree of efficiency in the enforcement of the criminal and traffic laws of the state.

(b) The law enforcement agencies of the state shall furnish to the division such information as they may have or shall hereafter acquire upon request of the Director of the Division of Arkansas State Police relating to crime and criminals and otherwise cooperate with the division in the enforcement of the criminal and traffic laws of this state.

History. Acts 1945, No. 231, §§ 10, 12; A.S.A. 1947, §§ 42-410, 42-412; Acts 2001, No. 1697, § 6; 2019, No. 910, § 5770.

Amendments. The 2019 amendment

substituted "Division of Arkansas State Police" for "Department of Arkansas Police" in (a) and (b); and substituted "division" for "department" twice in (b).

12-8-112. Headquarters — Identification Bureau.

(a) The Division of Arkansas State Police shall maintain headquarters and an Identification Bureau which shall be located at the State Capitol or elsewhere in Pulaski County.

(b) The division may establish district headquarters in other parts of the state if it is found to be necessary for the better enforcement of the provisions of this chapter. The Director of the Division of Arkansas State Police shall have the authority to assign the personnel for the district headquarters when designated.

History. Acts 1945, No. 231, § 11; A.S.A. 1947, § 42-411; Acts 2003, No. 1473, § 25; 2019, No. 910, § 5771.

Amendments. The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas Po-

lice” in (a) and in the second sentence of (b); substituted “Pulaski County” for “in the City of Little Rock” in (a); and substituted “division” for “department” in the first sentence (b).

12-8-113. Drug Abuse Enforcement Unit — Hot line.

(a) The Director of the Division of Arkansas State Police is directed to establish a Drug Abuse Enforcement Unit and assign sufficient supervisory, clerical, and enforcement personnel to carry out the duties and responsibilities of that unit as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq.

(b)(1) The unit shall operate a “drug abuse hot line” to allow citizens to use a toll-free in-watts telephone line to report to the Division of Arkansas State Police information regarding possible violations of the Uniform Controlled Substances Act, § 5-64-101 et seq., and other provisions of Arkansas law relating to unlawful use of drugs.

(2) The division shall encourage citizen involvement in combating drug-related crimes by publicizing the existence of the drug abuse hot line.

History. Acts 1975 (Extended Sess., 1976), No. 1017, § 20; A.S.A. 1947, § 42-404.1; Acts 1989, No. 859, § 1; 2019, No. 910, § 5772.

substituted “Division of Arkansas State Police” for “Department of Arkansas Police” in (a) and (b)(1); and substituted “division” for “department” in (b)(2).

Amendments. The 2019 amendment

12-8-114. Legal counsel and advisors.

(a) The Attorney General shall be the legal representative and advisor of the Arkansas State Police Commission, the Division of Arkansas State Police, and the Director of the Division of Arkansas State Police.

(b) However, the director, with the approval of the Attorney General and Governor, may employ other counsel when in the Attorney General’s and Governor’s judgment it is necessary for the proper enforcement of the provisions of this chapter and the efficient operation of the division.

(c) However, this chapter shall not be construed as relieving the prosecuting attorneys from any duties imposed upon them by law.

History. Acts 1945, No. 231, § 16; A.S.A. 1947, § 42-416; Acts 2019, No. 910, § 5773.

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” twice in (a); and substituted “division” for “department” in (b).

Amendments. The 2019 amendment

12-8-115. Physicians and surgeons.

(a) The Director of the Division of Arkansas State Police may designate one (1) physician and surgeon in each district of the state who

shall be the physician and surgeon of the Division of Arkansas State Police within and for the district.

(b)(1) The physician and surgeon shall conduct the physical examinations required by this chapter and give medical treatment to any member or officer of the division for injuries received while in the performance of official duty.

(2) The physician and surgeon shall be given honorary commissions by the director and shall serve without pay.

History. Acts 1945, No. 231, § 26; substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” twice in (a); and substituted “division” for “department” in (b)(1).
A.S.A. 1947, § 42-426; Acts 2019, No. 910, § 5774.
Amendments. The 2019 amendment

12-8-116. Motor vehicles.

(a)(1) All automobiles, motorcycles, or other vehicles of any nature owned, used, and operated by the Division of Arkansas State Police shall be exempt from the payment of any licenses, fees, and charges required by the laws of this state for the operation of the vehicles upon the public highways of this state.

(2) The Director of the Division of Arkansas State Police and the Secretary of the Department of Finance and Administration shall adopt identification tags or other insignia which shall be attached to the vehicles by the officers, members, and employees of the division, for which tag or insignia no charge shall be made or collected.

(b) The division is granted authority to purchase used vehicles for use in confidential assignments and drug investigations.

History. Acts 1945, No. 231, § 25; “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a)(2); and substituted “division” for “Department of Arkansas State Police” in (a)(2) and (b).
1983, No. 537, § 9; A.S.A. 1947, §§ 42-409.1, 42-425; Acts 2019, No. 910, § 5775.
Amendments. The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a)(1) and (a)(2); substituted

12-8-118. Payment of salaries and expenses.

The salaries and expenses provided for in this chapter shall be paid by warrant upon a voucher properly drawn by the Director of the Division of Arkansas State Police and paid out of any funds now available for the payment of salaries and expenses of the Division of Arkansas State Police from the Division of Arkansas State Police Fund or any other fund as provided by law.

History. Acts 1945, No. 231, § 14; substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” twice and “Division of Arkansas State Police Fund” for “Department of Arkansas State Police Fund”.
A.S.A. 1947, § 42-414; Acts 2019, No. 910, § 5776.
Amendments. The 2019 amendment substituted “Division of Arkansas State

12-8-119. Police training school.

(a) The Director of the Division of Arkansas State Police may establish, maintain, and conduct a police training school and may admit to the training school police officers and judicial officers of the various political subdivisions of the State of Arkansas.

(b) The director may prescribe all rules necessary for the proper functioning and operating of the school.

History. Acts 1945, No. 231, § 17; A.S.A. 1947, § 42-417; Acts 2019, No. 315, § 848; 2019, No. 910, § 5777.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b).

The 2019 amendment by No. 910 substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a).

12-8-120. Background investigations.

(a) The Division of Arkansas State Police is authorized to charge a fee, not to exceed twenty dollars (\$20.00), for each background investigation requested of and conducted by the division.

(b) The background investigation fee shall be collected by the division and deposited into the State Treasury as special revenue to the credit of the Division of Arkansas State Police Fund.

History. Acts 1993, No. 508, § 14; 2001, No. 1697, § 7; 2019, No. 910, § 5778.

Amendments. The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas State

Police” in (a); substituted “division” for “department” in (a) and (b); and substituted “Division of Arkansas State Police Fund” for “Department of Arkansas State Police Fund” in (b).

12-8-121. Use of state uniform, patch, or logo prohibited.

(a) It shall be prohibited for any law enforcement agency, private security firm, corporation, partnership, or individual to wear a uniform in the same design and specific color scheme as the Division of Arkansas State Police.

(b) No law enforcement agency, private security firm, corporation, partnership, or individual may use the Arkansas State Police uniform or patch, nor may the Arkansas State Police logo or the terms “Arkansas State Police”, “Arkansas State Trooper”, or “Arkansas State Troopers” be used or otherwise displayed for the endorsement of any product, business, or purpose without the express written permission of the Director of the Division of Arkansas State Police.

(c) Nothing in this section shall prohibit uniforms or commercial concerns from reproducing these items for division use, nor the public display of the uniform, patch, or logo when it relates to official governmental business.

History. Acts 1995, No. 935, §§ 1-3; substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a) and (b); and substituted § 5779. "division" for "department" in (c).

Amendments. The 2019 amendment

12-8-125. Small Municipality Law Enforcement Vehicle Grant Program.

(a) There is created the "Small Municipality Law Enforcement Vehicle Grant Program", to be administered by the Division of Arkansas State Police with funding from the General Improvement Fund or its successor fund or fund accounts, including the Development and Enhancement Fund.

(b)(1) The program may provide grants to cities of the second class as determined under § 14-37-103 or incorporated towns as determined under § 14-37-103 for the purpose of purchasing used vehicles from the Marketing and Redistribution Section within the Office of State Procurement.

(2) Vehicles purchased under subdivision (b)(1) of this section shall be used by law enforcement agencies of the city of the second class or incorporated town receiving the grant.

(c)(1) The division shall promulgate rules necessary for the implementation of the program.

(2) The rules shall include:

(A) The procedure for making an application for a grant;

(B) The selection criteria for a grant;

(C) The limitations on use of grant money; and

(D) A procedure to provide for accountability of grant recipients.

(d) A city of the second class or incorporated town shall not be required to provide matching funds to receive a grant under this section.

(e) If the Division of Arkansas State Police awards a grant to a city of the second class or incorporated town under this section, the division shall pay the grant funds for the purchase of a used vehicle directly to the Marketing and Redistribution Section within the Office of State Procurement.

(f) Funds from a grant received under this section shall not be used to pay sales tax for a used vehicle purchased from the Marketing and Redistribution Section within the Office of State Procurement.

(g) The awarding of grants under this section is contingent on the appropriation and availability of funding for the program.

History. Acts 2011, No. 1237, § 1; 2019, No. 82, § 5; 2019, No. 910, §§ 5780-5782.

A.C.R.C. Notes. Acts 2019, No. 82, § 1, provided: "Legislative intent. It is the intent of the General Assembly that the creation of the Development and Enhancement Fund is necessary to provide a mechanism to disburse funds for:

"(1) Various construction and improvement projects;

"(2) Unforeseen needs;

"(3) Funding deficiencies; and

"(4) The completion of projects previously funded by the General Assembly".

Amendments. The 2019 amendment by No. 82 added "including the Development and Enhancement Fund" in (a).

The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a) and (e); substituted "divi-

sion" for "Department of Arkansas State Police" in (c)(1) and (e); and deleted "of the Department of Finance and Administration" at the end of (e).

SUBCHAPTER 2 — POLICE OFFICERS

SECTION.

12-8-201. Members of police force — Selection.

12-8-203. Probationary period.

12-8-204. Tenure — Removal, suspension, or discharge.

SECTION.

12-8-210. Insurance — Medical and hospital — Definitions.

12-8-213. Equipment and uniforms.

12-8-215. Additional salary payments.

12-8-216. Salary administration grid.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health,

and safety shall become effective on July 1, 2019".

Acts 2019, No. 1007, § 23: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2019 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2019 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2019".

12-8-201. Members of police force — Selection.

(a) The Director of the Division of Arkansas State Police shall appoint all members of the police force, subject to approval of the Arkansas State Police Commission, and the director shall select the clerical and stenographic force of the Division of Arkansas State Police.

(b) The commission shall promulgate rules setting forth the minimum qualifications for employment as a division police officer and prescribing the manner of examination of applicants for the position.

(c) The director shall receive all applications for positions as division officers and submit them to the commission for examination as to the physical fitness and mental qualifications of the applicants and for such other examinations as provided for by the commission's rules.

(d) All applications and examinations shall be in writing and shall be kept as a permanent file by the commission for not less than five (5) years.

(e)(1) A list containing the names of all applicants who possess the necessary qualifications as determined by the commission shall be certified to the director.

(2) From this list, the director shall make the final selection for the appointments, and any vacancy occurring in the division shall be filled from this list.

History. Acts 1945, No. 231, §§ 5, 6; A.S.A. 1947, §§ 42-405, 42-406; Acts 2001, No. 1697, § 9; 2019, No. 315, § 849; 2019, No. 910, §§ 5783, 5784.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b) and (c).

The 2019 amendment by No. 910 substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” twice in (a); and substituted “division” for “department” in (b), (c), and (e)(2).

12-8-203. Probationary period.

(a)(1) Each person who is selected as a police officer of the Division of Arkansas State Police shall be a probationer for a period of eighteen (18) months from his or her date of hire.

(2) A probationer may be discharged by the Director of the Division of Arkansas State Police with the approval of the Arkansas State Police Commission with or without cause.

(b) The probationary period shall not apply to a person who has already served a probationary period.

History. Acts 1945, No. 231, § 6; 1981, No. 700, § 1; A.S.A. 1947, § 42-406; Acts 2001, No. 1697, § 11; 2003, No. 1041, § 1; 2005, No. 667, § 1; 2011, No. 14, § 1; 2019, No. 910, § 5785.

Amendments. The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a)(1) and (a)(2).

12-8-204. Tenure — Removal, suspension, or discharge.

(a) The members of the Division of Arkansas State Police shall hold their offices until and unless removed for cause.

(b) Should the Director of the Division of Arkansas State Police deem it necessary to remove, suspend, discharge, demote, or transfer for disciplinary reasons any division officer, the director shall do so by written notice.

(c)(1) Any division officer so removed, suspended, discharged, demoted, or transferred shall have the right of appeal to the Arkansas State Police Commission, provided that notice of the appeal shall be lodged with the commission within ten (10) days after notice to the officer of his or her discharge, removal, suspension, demotion, or disciplinary transfer.

(2) When so filed, the appeal shall be heard and determined by the commission within a reasonable time from the date the appeal is filed with the commission.

(d)(1) Provided the appeal is perfected within thirty (30) days from the date of the final order made by the commission, an appeal may be taken to the Pulaski County Circuit Court from any order of the commission discharging, removing, suspending, demoting, or transferring for disciplinary reasons any member of the division force.

(2) The appeal shall be heard by the court without the introduction of any further testimony.

History. Acts 1945, No. 231, § 6; 1981, No. 700, § 1; A.S.A. 1947, § 42-406; Acts 2001, No. 1697, § 12; 2019, No. 910, § 5786.

Amendments. The 2019 amendment

substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a) and (b); and substituted "division" for "department" in (b), (c)(1), and (d)(1).

12-8-210. Insurance — Medical and hospital — Definitions.

(a)(1) The Division of Arkansas State Police shall obtain a policy or contract of medical and hospital insurance or establish a self-insurance fund in lieu thereof to provide medical and hospital insurance for all eligible employees of the division.

(2) The division shall pay all or a portion of the premium, fee, or other costs for the policy or contract or payments into a self-insurance fund from funds appropriated to the division for personal service matching or which may be specifically appropriated for that purpose.

(b) The division may provide hospitalization and medical services coverage under a group health insurance program or may in lieu thereof provide coverage for hospitalization and medical insurance services under a self-insurance program established by the division for the spouses and dependents of eligible employees of the division and pay all or a portion of the premium thereon or payments into the self-insurance fund from funds appropriated for that purpose.

(c) In the event that the division, acting pursuant to a resolution adopted by the Arkansas State Police Commission, exercises the option to establish a self-insurance program, this program shall provide hospitalization and medical services coverage for eligible employees of the division and for the spouses and dependents of eligible employees of the division as authorized in this section and shall be operated in accordance with policies, rules, procedures, and benefits prescribed by the commission.

(d) Members of the division who retire and receive retirement benefits under the State Police Retirement System after July 1, 1985, shall be eligible to participate in the group health self-insurance program established by the commission for eligible retirees and for their spouses and dependents in the same manner and under the same conditions as provided in §§ 21-5-410 and 21-5-411, which authorize retired state employees receiving retirement benefits under the Arkansas Public Employees' Retirement System to participate in the State and Public School Life and Health Insurance Program.

(e) As used in this section:

(1) "Eligible employee" means an individual who is:

(A) A full-time employee of the division as defined in the plan document for the Arkansas State Police Employee Health Plan; and

(B) Qualified to enroll in the health benefit plan offered by the division; and

(2) “Eligible retiree” means an employee who:

(A) Retires under the division’s formal retirement plan;

(B) Is eligible to continue to participate in the retirement plan upon retirement as defined in the plan document for the Arkansas State Police Employee Health Plan; and

(C) Is qualified to enroll in the health benefit plan offered by the division.

History. Acts 1971, No. 243, § 1; 1975, No. 636, § 1; 1985, No. 951, §§ 1-3; A.S.A. 1947, §§ 42-434 — 42-434.2; Acts 2001, No. 1697, § 17; 2017, No. 1054, § 1.

Amendments. The 2017 amendment, in (a)(1), substituted “shall” for “is authorized and directed to” and “eligible” for “uniformed”; inserted “all or a portion of” in (a)(2); in (b), substituted “may” for “is authorized to” following “The department”, “eligible employees” for “uniformed personnel”, and “pay all or a portion of” for

“to pay”; in (c), deleted “therefor” following “Commission”, substituted “eligible” for “uniformed” following “coverage for”, and substituted “eligible employees” for “uniformed personnel”; in (d), substituted “eligible retirees” for “uniformed personnel”, “21-5-411” for “21-5-412”, and “State and Public School Life and Health Insurance Program” for “state employees’ hospitalization and medical insurance program”; and added (e).

12-8-213. Equipment and uniforms.

(a) Such motorcycles, automobiles, and other vehicles, equipment, and supplies as may be necessary for the proper and efficient operation of the Division of Arkansas State Police and as may be necessary for the proper enforcement of this chapter shall be furnished to the officers and patrol personnel by the division.

(b) The officers and patrol personnel shall wear and display upon their person a metal badge or other insignia as the Director of the Division of Arkansas State Police shall require, bearing the words “Arkansas State Police”.

(c) All such patrol personnel and officers shall wear such uniforms at such times and places as shall be designated and required by the director.

History. Acts 1945, No. 231, § 9; A.S.A. 1947, § 42-409; Acts 2019, No. 910, § 5787.

Amendments. The 2019 amendment, in (a), substituted “Division of Arkansas State Police” for “Department of Arkansas

State Police” and “division” for “department”; substituted “Director of the Division of Arkansas State Police” for “director of the department” in (b); and substituted “director” for “Director of the Department of Arkansas State Police” in (c).

12-8-215. Additional salary payments.

(a) In the event that sufficient revenues in the judgment of the Director of the Division of Arkansas State Police exist, the Division of Arkansas State Police is authorized to make additional salary pay-

ments from such funds to those employees who have attained law enforcement certification above the basic certificate level, as defined by the Arkansas Commission on Law Enforcement Standards and Training.

(b) It is the intent of this section that such payment shall be optional, at the discretion of the director, dependent on sufficient revenues, and shall not be implemented using funds specifically set aside for other programs within the division.

(c)(1) Employees shall be eligible for all or a portion of additional salary payments scheduled as follows:

- (A) General certificate — three hundred dollars (\$300) annually;
- (B) Intermediate certificate — six hundred dollars (\$600) annually;
- (C) Advanced certificate — nine hundred dollars (\$900) annually; and
- (D) Senior certificate — one thousand two hundred dollars (\$1,200) annually.

(2) Payment of the funds may be made monthly, quarterly, semianually, or annually depending upon the availability of revenues and shall be restricted to the following classifications:

- (A) Director of the Division of Arkansas State Police;
- (B) Arkansas State Police lieutenant colonel;
- (C) Arkansas State Police major;
- (D) Arkansas State Police captain;
- (E) Arkansas State Police lieutenant;
- (F) Arkansas State Police sergeant;
- (G) Arkansas State Police corporal;
- (H) Arkansas State Police trooper, first class; and
- (I) Arkansas State Police trooper.

(d) Payments made under this section shall be considered part of the employee’s regular income and subject to all applicable withholding required by law.

History. Acts 1993, No. 508, § 15; 1995, No. 229, § 1; 2003, No. 1041, § 3; 2013, No. 143, § 1; 2019, No. §§ 5788, 5789.

Amendments. The 2019 amendment

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” twice in (a) and in (c)(2)(A); and substituted “division” for “department” in (b).

12-8-216. Salary administration grid.

(a) Should additional general revenue funds become available to the Division of Arkansas State Police, as determined by the Chief Fiscal Officer of the State, the division shall implement a salary administration grid for the following uniformed commissioned officer classifications:

| Class Code | Title | Grade |
|------------|-------------|-------|
| T001C | ASP MAJOR | GS14 |
| T003C | ASP CAPTAIN | GS13 |

| Class Code | Title | Grade |
|------------|-----------------------|-------|
| T007C | ASP LIEUTENANT | GS12 |
| T011C | ASP SERGEANT | GS11 |
| T022C | ASP CORPORAL | GS09 |
| T035C | ASP TROOPER 1ST CLASS | GS08 |
| T100C | ASP TROOPER | GS07 |

(b) The salary administration grid established under this section shall set the entry pay level for each of the classifications listed in subsection (a) of this section at five percent (5%) above the entry pay level of the assigned grade under the Uniform Classification and Compensation Act, § 21-5-201 et seq.

History. Acts 2019, No. 1007, § 20.

SUBCHAPTER 3 — DIVISION OF ARKANSAS STATE POLICE COMMUNICATIONS

EQUIPMENT LEASING ACT

| | |
|-----------------------------------------------------------------|------------------------------------------|
| SECTION. | SECTION. |
| 12-8-301. Title. | 12-8-307. Lease fund — Pledged revenues. |
| 12-8-303. Definitions. | |
| 12-8-305. Arkansas State Police Commission — Additional powers. | |

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-8-301. Title.

This subchapter shall be known and may be cited as the “Division of Arkansas State Police Communications Equipment Leasing Act”.

History. Acts 1985, No. 817, § 1; A.S.A. 1947, § 42-468; Acts 2019, No. 910, § 5790.

Amendments. The 2019 amendment substituted “Division of Arkansas State Police Communications Equipment Leas-

ing Act" for "Department of Arkansas State Police Communications Equipment Leasing Act".

12-8-303. Definitions.

As used in this subchapter:

(1) "Acquire" means to acquire by lease, lease-purchase, or otherwise, construct, repair, alter, install, restore, or place on any land or in any building or motor vehicle any communications equipment by negotiation or bidding upon such terms and conditions as are determined by the Arkansas State Police Commission to be in the best interests of the Division of Arkansas State Police and that will most effectively serve the purposes of this subchapter;

(2) "Commission" means the Arkansas State Police Commission, which is the commission created by § 12-8-102, or any successor agency;

(3) "Communications equipment" means public safety communication equipment and systems, including buildings, structures, furnishings, and fixtures used directly for public safety purposes in connection with the operation thereof, including, but not limited to, radio broadcast and receiving, telegraph, television, teletype, microwave transmission, and similar systems of communication by voice or by conveyance of words, signals, or images by electronic or electrical means;

(4) "Cost", as applied to communications equipment, means all costs of such equipment and, without limiting the generality of the foregoing, shall include the following:

(A) All costs of the acquisition of any such communications equipment and all costs incident or related thereto;

(B) The cost of architectural, engineering, legal, and related services, including:

(i) The cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and

(ii) All other expenses necessary or incident to planning, providing or determining the need for or the feasibility and practicability of such communications equipment; and

(C) All costs paid or incurred in connection with the financing of such communications equipment, including:

(i) Out-of-pocket expenses;

(ii) The cost of financing, legal, accounting, financial advisory and consulting fees, expenses, and disbursements;

(iii) The cost of any policy of insurance, letter of credit, or guaranty;

(iv) The cost of printing, engraving, and reproduction services; and

(v) The cost of the initial or acceptance fee of any trustee or paying agent;

(5) [Repealed.]

(6) [Repealed.]

(7) "Lease or lease-purchase agreement" means the contract entered into by the commission to acquire the communications equipment;

(8) "Lease payments" means payments to be made by the division from pledged revenues or other legally available sources to pay costs of communications equipment; and

(9) "Pledged revenues" means all revenues authorized by § 12-8-307 to be pledged for the security and payment of the lease.

History. Acts 1985, No. 817, § 3; A.S.A. Police" for "Department of Arkansas State Police" in (1); repealed former (5) and (6); 1947, § 42-470; Acts 2019, No. 910, §§ 5791-5793.

Amendments. The 2019 amendment substituted "Division of Arkansas State and substituted "division" for "department" in (8).

12-8-305. Arkansas State Police Commission — Additional powers.

(a) In addition to the powers, purposes, and authorities set forth elsewhere in this subchapter or in other laws, the Arkansas State Police Commission may:

(1)(A) Acquire, construct, repair, renovate, alter, maintain, and equip communications equipment for use by the Division of Arkansas State Police.

(B) However, the communications equipment acquired under the authority of this subchapter shall not be used for the transmission of telephonic messages which bypass the public telephone network;

(2) Contract for the lease, lease-purchase, or purchase of the communications equipment on such terms and conditions as are specified by this subchapter and approved by the Director of the Division of Arkansas State Police with the consent of the commission;

(3) Provide for the payment of the cost of acquisition from any legally available source or sources, including, without limitation, the revenues authorized by § 12-8-307, funds appropriated and made available under §§ 12-8-101 — 12-8-107, 12-8-110 — 12-8-112, 12-8-114 — 12-8-116, 12-8-118, 12-8-119, 12-8-201 — 12-8-205, 12-8-213, and 12-12-103, and funds, if any, appropriated for the communications equipment;

(4) Purchase, acquire, lease, lease-purchase, or rent, and receive bequests or donations of, or otherwise acquire, sell, trade, or barter any real, personal, or mixed property and convert such property into money or other property;

(5) Contract and be contracted with;

(6) Apply for, receive, accept, and use any moneys and property from the United States Government, any agency, any state or governmental body or political subdivision, any public or private corporation or organization of any nature, or any individual;

(7) Invest and reinvest any of its moneys in securities, obligations, banking arrangements, or investment agreements selected by the commission;

(8) Make and execute all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this subchapter;

(9) In connection with the acquisition and financing of the costs of communication equipment, employ attorneys, accountants, underwriters, and financial advisors and such other advisors, consultants, and agents as may be necessary in its judgment, and fix their compensation;

(10) Procure insurance against any loss in connection with its property and other assets, in such amounts and from such insurers as it may deem advisable, including the power to pay premiums on any such insurance;

(11) Procure insurance or guaranties from any public or private entities, including any department, agency, or instrumentality of the United States and to secure payment of any lease entered into under the authority of this subchapter, including the power to pay premiums on any such insurance or guaranty;

(12) Arrange for the use of such communications equipment by any federal, state, or local governmental agency or any other person, from time to time, as any of such communications equipment is not needed by the division and collect fees and charges, as the commission determines to be reasonable, in connection with the use of any communications equipment by any other person;

(13) Cooperate with and exchange services and information with any federal, state, or local governmental agency; and

(14) Take such other action, not inconsistent with law, as may be necessary, convenient, or desirable to carry out the powers, purposes, and authorities set forth in this subchapter and carry out the intent of this subchapter.

(b) All the powers, purposes, and authorities set forth in subsection (a) of this section, except those relating to the contracting for the lease, purchase, or lease-purchase of the communications equipment, may be carried out by the division.

History. Acts 1985, No. 817, § 4; A.S.A. 1947, § 42-471; Acts 2005, No. 1962, § 25; 2019, No. 910, §§ 5794-5797.

Amendments. The 2019 amendment substituted "Division of Arkansas State

Police" for "Department of Arkansas State Police" in (a)(1)(A) and (a)(2); and substituted "division" for "department" in (a)(12) and (b).

12-8-307. Lease fund — Pledged revenues.

(a)(1) The lease payments and other costs relating to the communications equipment shall be secured solely by a lien on and pledge of all revenues derived from the following fees and charges fixed and imposed by § 27-16-801, or pursuant to any subsequent similar laws, which are confirmed, ratified, fixed, and imposed, and which are as follows:

(A) An operator's or a motorcycle driver's license for two (2) years — six dollars (\$6.00);

(B) A chauffeur's license for two (2) years — ten dollars (\$10.00);

(C) A motor scooter license for not more than two (2) years — two dollars (\$2.00);

(D) An operator's license or a motorcycle driver's license for four (4) years — twelve dollars (\$12.00); and

(E) A chauffeur’s license for four (4) years — twenty dollars (\$20.00).

(2) The pledging of such revenues, collectively the “pledged revenues”, is authorized.

(b) On the first day of the month next succeeding the execution of any leasing agreement authorized by this subchapter, all pledged revenues are specifically declared to be cash funds restricted in their use and dedicated to be used solely as authorized in this subchapter.

(c)(1) On the first day of the month next succeeding the execution of the lease authorized by this subchapter and so long as lease payments remain to be paid, the pledged revenues shall not be deposited into the State Treasury and shall not be subject to legislative appropriation.

(2) The pledged revenues shall be deposited into a bank or banks selected by the Division of Arkansas State Police, as and when received by the Commissioner of Motor Vehicles, the Office of Motor Vehicle, the Division of Arkansas State Police, the Arkansas State Police Commission, the Secretary of the Department of Finance and Administration, or any other state agency.

(3) The pledged revenues shall be deposited to the credit of a fund created and designated as the “Division of Arkansas State Police Communications Equipment Lease Fund”, referred to in this subchapter as the lease fund.

(d) So long as there are remaining any lease payments to be made, the General Assembly may eliminate or change the driver’s license fees referred to as pledged revenues within this section, under § 27-16-801, or any subsequent similar law, but only on condition that there is always maintained in effect and made available for the payment of lease payments sources of revenue which produce revenues at least sufficient in amount to provide for the payment when due of the lease payments.

History. Acts 1985, No. 817, § 5; A.S.A. 1947, § 42-472; Acts 2019, No. 910, § 3374.

Amendments. The 2019 amendment, in (c)(2), substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” twice, and substituted “Sec-

retary” for “Director”; and substituted “Division of Arkansas State Police Communications Equipment Lease Fund” for “Department of Arkansas State Police Communications Equipment Lease Fund” in (c)(3).

SUBCHAPTER 4 — ARKANSAS SPEED TRAP LAW

SECTION.

12-8-402. Definitions.

12-8-403. Inquiry to determine abuse.

SECTION.

12-8-404. Sanctions.

12-8-405. Required audit inquiry.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and

operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-8-402. Definitions.

As used in this subchapter:

(1) "Abusing police power" means exercising police power to enforce criminal and traffic laws for the principal purpose of raising revenue for an affected municipality and not for the purpose of public safety and welfare;

(2) "Affected highway" means any highway which is part of the state highway system;

(3) "Affected municipality" means a city of the first class, a city of the second class, or an incorporated town through which passes an affected highway;

(4) "Enterprise fund" means a proprietary fund type used to report an activity for which a fee is charged to external users for goods or services;

(5) "Fiduciary fund" means a fund type used to report assets held in a trustee or agency capacity and which cannot be used to support an affected municipality's own programs; and

(6)(A) "Revenue" means moneys resulting from fines and costs from traffic offense citations written by or arrests made by an affected municipality's law enforcement agency or moneys resulting from ancillary actions related to the enforcement of a traffic offense, including failure to appear and failure to pay, if the traffic offense is

a:

(i) Misdemeanor;

(ii) Violation of state law; or

(iii) Violation of a local ordinance.

(B) "Revenue" does not include moneys received by an affected municipality and remitted to another governmental entity.

History. Acts 1995, No. 855, § 2; 1997, No. 211, § 1; 2019, No. 364, § 1.

Amendments. The 2019 amendment, in (1), substituted "means exercising" for "means the exercise of", and substituted

"an affected municipality" for "the municipality"; in (3), inserted "first class, a city of the", and inserted "an"; added (4) through (6); and made stylistic changes.

12-8-403. Inquiry to determine abuse.

(a)(1) Upon the request of the prosecuting attorney of a judicial district in which an affected municipality is located, the Director of the Division of Arkansas State Police may investigate and determine

whether the affected municipality is abusing police power by conducting an unlawful speed trap.

(2)(A) The investigation shall require the affected municipality to submit a certified record of all fines, costs, citations, and municipal expenditures, as well as the percentage of speeding citations that are written for persons speeding ten miles per hour (10 m.p.h.) or less than the posted speed limit.

(B) The records required under subdivision (a)(2)(A) of this section may encompass a reasonable time period as requested by the Division of Arkansas State Police but shall contain at least ninety (90) days' worth of documentation.

(C)(i) The affected municipality shall submit the requested records within thirty (30) days, unless an extension for submission is approved by the director, and shall cooperate with all other aspects of the investigation.

(ii) Failure to comply with a requirement of this section shall result in automatic sanctions.

(b) It is presumed that the affected municipality is abusing police power by conducting an unlawful speed trap upon a finding by the director that:

(1) The amount of revenue for the affected municipality exceeded thirty percent (30%) of the affected municipality's total expenditures, less capital expenditures, water department expenditures, sewer department expenditures, fiduciary fund expenditures, enterprise fund expenditures, and debt service, in the preceding year; or

(2) More than fifty percent (50%) of the summons written for the traffic offense of speeding that is a misdemeanor, a violation of state law, or a violation of a local ordinance in the affected municipality are written for speed limit violations that are ten miles per hour (10 m.p.h.) or less than the posted speed limit.

History. Acts 1995, No. 855, § 3; 1997, No. 842, § 1; 2001, No. 1425, § 1; 2019, No. 364, § 2; 2019, No. 910, §§ 5798, 5799.

Amendments. The 2019 amendment by No. 364, in (a)(1), substituted "may investigate and determine whether the affected municipality" for "is authorized to investigate and determine whether any municipality", and added "by conducting an unlawful speed trap"; in (a)(2)(A), substituted "speeding citations" for "citations", inserted "persons speeding", and added "limit"; rewrote (a)(2)(B); inserted "by the director" in (a)(2)(C)(i); in the introductory language of (b), inserted "by conducting an unlawful speed trap", and inserted "by the director"; in (b)(1), substi-

tuted "for the affected municipality exceeded" for "produced by fines and costs from traffic offenses that are misdemeanors or violations of state law or local ordinance for which citations are written by the police department of the affected municipality occurring on the affected highways exceeds" and inserted "water department expenditures, sewer department expenditures, fiduciary fund expenditures, enterprise fund expenditures"; inserted "speed" following "posted" in (b)(2); and made stylistic changes.

The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a)(1) and (a)(2)(B).

12-8-404. Sanctions.

(a)(1) Upon the completion of an inquiry, the Director of the Division of Arkansas State Police shall forward all information to the prosecuting attorney of the affected municipality, who will make the determination as to whether the municipality has abused its police power.

(2) The prosecuting attorney shall have the power to issue the following sanctions:

(A) Order that a municipality abusing police power cease patrolling any or all affected highways; or

(B) Order that all or any part of future fines and court costs received from traffic law violations or misdemeanor cases where the location of the offense is an affected highway be paid over to a county fund for the maintenance and operation of the public schools located in the county in which the municipality is located.

(b) Any violation of the sanction ordered under subdivision (a)(2)(A) of this section by any police officer shall constitute a Class A misdemeanor for each citation or summons issued or misdemeanor arrest made in violation of the prosecuting attorney's order.

History. Acts 1995, No. 855, §§ 4, 5; 1997, No. 842, § 2; 2001, No. 1425, § 2; 2005, No. 1962, § 27; 2019, No. 910, § 5800.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a)(1).

12-8-405. Required audit inquiry.

An audit of an affected municipality under § 10-4-412 or § 14-58-101 shall include an inquiry to determine whether the affected municipality is potentially abusing police power.

History. Acts 2019, No. 364, § 3.

SUBCHAPTER 5 — CRIMES AGAINST CHILDREN DIVISION**SECTION.**

12-8-506. [Repealed.]

12-8-508. Provision of information and assistance.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding

the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health,

and safety shall become effective on July 1, 2019”.

12-8-506. [Repealed.]

Publisher’s Notes. This section, concerning oversight, was repealed by Acts 2017, No. 713, § 3. The section was derived from Acts 1997, No. 1240, § 6; 2005, No. 1466, § 3.

12-8-508. Provision of information and assistance.

Notwithstanding a rule to the contrary, upon request of a member of the General Assembly or legislative staff or upon request of a legislative committee, the Crimes Against Children Division of the Division of Arkansas State Police shall immediately provide information requested with respect to child welfare as contemplated under the Arkansas Child Welfare Public Accountability Act, § 9-32-201 et seq.

History. Acts 2001, No. 1727, § 6; 2005, No. 1466, § 4; 2019, No. 315, § 850. **Amendments.** The 2019 amendment deleted “or regulation” following “rule”.

SUBCHAPTER 6 — DIVISION OF ARKANSAS STATE POLICE HEADQUARTERS FACILITIES AND EQUIPMENT FINANCING ACT

| | |
|------------------------------------------------------|-------------------------------------------------------------|
| SECTION. | SECTION. |
| 12-8-601. Title. | 12-8-606. Use of pledged revenues. |
| 12-8-602. Legislative findings. | 12-8-607. Division of Arkansas State Police Financing Fund. |
| 12-8-603. Definitions. | |
| 12-8-604. Pledge of revenues. | |
| 12-8-605. Arkansas State Police Commission — Powers. | |

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-8-601. Title.

This subchapter shall be known and may be cited as the “Division of Arkansas State Police Headquarters Facilities and Equipment Financing Act”.

History. Acts 2015, No. 856, § 2; 2019, No. 910, § 5801.

Amendments. The 2019 amendment substituted “Division of Arkansas State Police Headquarters Facilities and Equipment Financing Act” for “Department of Arkansas State Police Headquarters Facilities and Equipment Financing Act”.

12-8-602. Legislative findings.

The General Assembly finds that:

(1) The Division of Arkansas State Police is faced daily with:

(A) Maintaining the most efficient and secure methods of transmitting and processing information between officers in the field and headquarters;

(B) The need to maintain and develop the most efficient means of allocating division personnel and other resources, particularly in emergency circumstances; and

(C) The need to design, construct, and maintain facilities from which the division’s personnel and resources may be stationed and deployed;

(2) There is a need to continuously improve, upgrade, expand, and maintain the division’s headquarters facilities and communication and information technology systems and equipment to support the police force and its mission to protect and serve the citizens of the state;

(3) A designated method of financing is necessary to enable the division to obtain and maintain communication and information technology equipment and headquarters facilities;

(4) The use of tax-exempt revenue bonds to finance communication and information technology equipment and headquarters facilities has proven to be an economical and cost-efficient method for financing equipment and facilities for the division;

(5) Certain driver’s license fees have been pledged and utilized by the Department of Arkansas State Police or the Division of Arkansas State Police since 1997 to finance equipment and facilities for the department or division;

(6) These driver’s license fees should continue to be designated as a source of funding to be utilized and pledged by the division to finance or purchase communication and information technology equipment and headquarters facilities;

(7) Communication and information technology equipment and headquarters facilities are needed to maintain modern law enforcement and are, therefore, essential to the safety and welfare of the people of the state; and

(8) The most feasible and least expensive way of providing a designated source for financing the acquisition and construction of headquarters facilities and communication and information technology

equipment is to authorize the use of revenue bonds and designate certain driver license fees to be utilized and pledged for that purpose.

History. Acts 2015, No. 856, § 2; 2019, No. 910, § 5802.

Amendments. The 2019 amendment substituted “division” for “department” and made similar changes throughout the section; substituted “Division of Arkansas

State Police” for “Department of Arkansas State Police” in the introductory language of (1); and, in (5), substituted “Department of Arkansas State Police or Division of Arkansas State Police” for “department” and added “or division” at the end.

12-8-603. Definitions.

As used in this subchapter:

(1) “Acquire” means to acquire by purchase or otherwise, construct, repair, alter, install, restore, or place on land or in a building or motor vehicle by negotiation or bidding on terms and conditions that:

(A) Are determined by the Arkansas State Police Commission to be in the best interests of the Division of Arkansas State Police; and

(B) Will most effectively serve the purposes of this subchapter;

(2) “Communication and information technology equipment” means:

(A) Wireless data and related technologies equipment, including without limitation workstations, modems, and other vehicle-based equipment, network controllers, computer-aided dispatch equipment, central information services sites with related server computers and controllers, software and information support;

(B) Furnishings and fixtures used in connection with the operation of equipment described in subdivision (2)(A) of this section; and

(C) Other equipment, property, and items determined by the commission to be necessary to accomplish the purpose of this subchapter;

(3) “Cost” means the costs related to a headquarters facility or communication and information technology equipment, including without limitation the following:

(A) The costs of the acquisition of communication and information technology equipment and the related costs, including without limitation engineering, architectural, consulting, and related services;

(B) The cost of acquiring an interest in real estate for the location of a headquarters facility that provides necessary or recommended access or buffer zones or that facilitates the delivery of utility services and the related costs, including without limitation engineering, architectural, consulting, and related services;

(C) The cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and revenues;

(D) Other expenses necessary or incident to planning, providing, or determining the need for or the feasibility of the headquarters facility or communication and information technology equipment;

(E) The costs of related software for the operation and support of the communication and information technology equipment;

(F) The costs of database development and other information sources and the training required for the efficient use of communication and information technology equipment; and

(G) The costs paid or incurred in connection with the issuance of bonds by the Arkansas Development Finance Authority to finance the acquisition, development, upgrade, improvement, or expansion of a headquarters facility or communication and information technology equipment;

(4) “Debt service payment” means a payment to be made by the division from pledged revenues or other legally available sources to secure and provide for payments due on any bonds or other obligations issued by the authority to accomplish the purposes of this subchapter;

(5) “Financing documents” means a note and mortgage, loan agreement, lease purchase agreement, trust indenture, and related documents executed in connection with the issuance of bonds by the authority to finance headquarters facilities or communication and information technology equipment;

(6) “Headquarters facility” means part or all of one (1) or more items or properties used by the division to accomplish or facilitate its purposes, including without limitation:

(A) Land, buildings, fixtures, infrastructure, improvements, furniture, equipment, software, and personal property necessary or convenient to the land, buildings, fixtures, infrastructure, improvements, furniture, equipment, and software; and

(B) Engineering, design, construction, or architectural plans related to a property used by the division;

(7) “Pledged revenues” means the fees generated under § 27-16-801(a) and § 27-23-118(a)(3) that may be pledged for the security and payment of debt service payments under this subchapter; and

(8) “Purchase agreement” means an agreement entered into by the commission with a vendor to acquire a headquarters facility or communication and information technology equipment.

History. Acts 2015, No. 856, § 2; 2019, No. 910, §§ 5803, 5804. Police” for “Department of Arkansas State Police” in (1)(A); and substituted “division” for “department” in the introductory language of (6) and in (6)(B).

Amendments. The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (2).

12-8-604. Pledge of revenues.

The fees generated under § 27-16-801(a) and § 27-23-118(a)(3) shall be:

(1) Pledged to meet obligations authorized under this subchapter; and

(2) Used by the Division of Arkansas State Police as provided in this subchapter.

History. Acts 2015, No. 856, § 2; 2019, No. 910, § 5805. substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (2).

Amendments. The 2019 amendment

12-8-605. Arkansas State Police Commission — Powers.

The Arkansas State Police Commission may:

(1) Acquire, construct, repair, renovate, alter, maintain, and equip headquarters facilities and communication and information technology equipment;

(2) Contract to acquire headquarters facilities and communication and information technology equipment on the terms and conditions specified by this subchapter and approved by the Director of the Division of Arkansas State Police with the consent of the commission;

(3) Provide for the payment of the costs associated with the acquisition of headquarters facilities and communication and information technology equipment from any legally available source, including without limitation pledged revenues and funds appropriated and made available under § 12-8-101 et seq.;

(4) Enter into financing documents and agreements with the Arkansas Development Finance Authority that are necessary and appropriate to secure obligations issued by the authority that will facilitate the acquisition of the headquarters facilities and communication and information technology equipment; and

(5) Take other action, not inconsistent with law, that may be necessary, convenient, or desirable to carry out the powers, purposes, and authority stated in this subchapter or to carry out the intent of this subchapter.

History. Acts 2015, No. 856, § 2; 2019, No. 910, § 5806. substituted “Division of Arkansas State Police” for “Department of Arkansas State

Amendments. The 2019 amendment Police” in (2).

12-8-606. Use of pledged revenues.

(a)(1) The debt service payments and other costs relating to a headquarters facility or communication and information technology equipment shall be secured by a lien on and pledge of the pledged revenues.

(2) To the extent that pledged revenues are not required to make debt service payments, the pledged revenues shall be released to the Division of Arkansas State Police to provide operating funds as described in this section.

(b)(1) All pledged revenues are cash funds restricted in their use and dedicated and to be used solely as provided in this subchapter.

(2) When pledged revenues are received by the Commissioner of Motor Vehicles, the Office of Motor Vehicle, the Division of Arkansas State Police, the Arkansas State Police Commission, the Department of Finance and Administration, or any other state agency, the pledged revenues shall be deposited as cash funds into a bank selected by the Division of Arkansas State Police to the credit of the Division of Arkansas State Police Financing Fund.

(c)(1) On the date that the Arkansas Development Finance Authority issues bonds under this subchapter and the Arkansas Development

Finance Authority Act, § 15-5-101 et seq., §§ 15-5-201 — 15-5-211, 15-5-213, and 15-5-301 — 15-5-316, any revenues in the Division of Arkansas State Police Financing Fund shall be pledged revenues.

(2) Debt service payments shall be paid from the Division of Arkansas State Police Financing Fund as stated in the financing documents.

(3)(A) If all debt service payments have been properly made on the last day of each fiscal quarter, the pledged revenues remaining in the Division of Arkansas State Police Financing Fund shall be withdrawn from the Division of Arkansas State Police Financing Fund and deposited into the State Treasury as special revenues to the credit of the Division of Arkansas State Police Fund.

(B) However, if any debt service payments remain to be paid under this subchapter, all moneys in the Division of Arkansas State Police Financing Fund shall continue to be pledged to the debt service payments and other costs in connection with the bonds and the maintenance of reserves, notwithstanding the right of the Division of Arkansas State Police to withdraw funds on the last day of each fiscal quarter if debt service payments are current.

(d) If any debt service payments remain to be made, the General Assembly may modify or change the pledged revenues only if there are always maintained in effect and made available for the payment of debt service payments sources of revenue comparable in amount and time of receipt that produce revenues sufficient to provide for and secure debt service payments when due.

History. Acts 2015, No. 856, § 2; 2019, No. 910, § 5807.

Amendments. The 2019 amendment substituted “Division of Arkansas State

Police” for “Department of Arkansas State Police” and made similar changes throughout the section.

12-8-607. Division of Arkansas State Police Financing Fund.

(a) There is created the Division of Arkansas State Police Financing Fund.

(b) The fund is a cash fund of the Division of Arkansas State Police and shall be used as provided in this subchapter.

History. Acts 2015, No. 856, § 2; 2019, No. 910, § 5808.

Amendments. The 2019 amendment substituted “Division of Arkansas State Police Financing Fund” for “Department

of Arkansas State Police Financing Fund” in the section heading and in (a); and substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (b).

CHAPTER 9

LAW ENFORCEMENT OFFICER TRAINING AND STANDARDS

SUBCHAPTER.

1. COMMISSION ON STANDARDS AND TRAINING.
2. LAW ENFORCEMENT TRAINING ACADEMY.

SUBCHAPTER

- 3. AUXILIARY LAW ENFORCEMENT OFFICERS.
- 4. RADAR INSTRUCTORS AND OPERATORS.
- 6. LAW ENFORCEMENT OFFICER EMPLOYMENT, APPOINTMENT, OR SEPARATION.

SUBCHAPTER 1 — COMMISSION ON
STANDARDS AND TRAINING

SECTION.

- 12-9-102. Definitions.
- 12-9-103. Commission created — Members — Meetings — Director.
- 12-9-104. Commission's powers generally.
- 12-9-105. Employees.
- 12-9-106. Selection and training requirements — Exceptions.
- 12-9-107. Training programs.
- 12-9-108. Failure to meet qualifications — Effect — Exemptions.
- 12-9-110. Training of civilians to file parking violations and traffic accident reports.
- 12-9-111. Uniforms.
- 12-9-115. Training for constables.
- 12-9-117. Award of pistol upon retirement or death of a certified law

SECTION.

- enforcement officer employed by the division.
- 12-9-118. New or inactive law enforcement agency — Approval by commission required — Definition.
- 12-9-119. Behavioral health crisis intervention training.
- 12-9-120. Imposition of administrative penalties.
- 12-9-121. Additional salary payment.
- 12-9-122. Controlled substance overdose identification training — Definition.
- 12-9-123. Missing and unidentified persons training.

Effective Dates. Acts 2018, No. 202, § 12: July 1, 2018.
Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emer-

gency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-9-102. Definitions.

As used in this subchapter:

- (1) "Law enforcement agency" means:
 - (A) A private college or university law enforcement agency as described in § 12-20-101 et seq.;
 - (B) The Division of Law Enforcement Standards and Training and the Black River Technical College Law Enforcement Training Academy as designated under § 12-9-210; and

(C) Any other entity designated by law as a law enforcement agency;

(2) “Law enforcement officer” means an appointed law enforcement officer who is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state, excluding only those officers who are elected by a vote of the people; and

(3) “Political subdivision” means any county, municipality, township, or other specific local unit of general government.

History. Acts 1975, No. 452, § 2; A.S.A. 1947, § 42-1001; Acts 1989, No. 25, § 2; 2017, No. 497, § 2; 2019, No. 910, § 5809.

Amendments. The 2017 amendment deleted former (1); added present (1); and made a stylistic change.

The 2019 amendment substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training” in (1)(B).

12-9-103. Commission created — Members — Meetings — Director.

(a) The members of the Arkansas Commission on Law Enforcement Standards and Training shall consist of ten (10) members, to be appointed by the Governor with the advice and approval of the Senate.

(b)(1)(A) Two (2) members of the commission shall be chiefs of police of municipalities in Arkansas, two (2) members of the commission shall be county sheriffs of counties in this state, one (1) member shall be an officer of the Division of Arkansas State Police, two (2) members shall be appointed to represent the public, one (1) member shall be an educator in the field of criminal justice, and one (1) member shall represent the Arkansas Municipal Police Association.

(B) Each congressional district of the state shall be represented on the commission, with the remaining members to be appointed from the state at large.

(2)(A) One (1) member shall not be actively engaged in or retired from law enforcement.

(B) The member under subdivision (b)(2)(A) of this section shall be:

(i) At least sixty (60) years of age and shall represent the elderly;

(ii) Appointed from the state at large subject to confirmation by the Senate; and

(iii) A full voting member.

(c) Members shall be appointed for terms of seven (7) years or until their successors are appointed and qualified.

(d) If a vacancy occurs on the commission due to death, resignation, or for other reason, the vacancy shall be filled by appointment by the Governor, in the same manner as provided for the initial appointment for the position, for the remainder of the unexpired portion of the term thereof.

(e) Members of the commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The commission shall meet at such times as may be provided by the rules of the commission, or upon call of the chair, or upon written request of any four (4) members.

(g)(1) Upon recommendation of the commission, the Governor shall appoint the Director of the Division of Law Enforcement Standards and Training, who shall perform such duties as may be directed by the commission and who shall serve at the pleasure of the Governor.

(2) The director shall report to the Secretary of the Department of Public Safety.

History. Acts 1981, No. 45, § 7; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 42-701.1; Acts 1993, No. 109, § 1; 1997, No. 250, § 65; 2009, No. 205, § 1; 2011, No. 283, § 1; 2017, No. 250, § 2; 2017, No. 497, § 3; 2019, No. 910, §§ 5810, 5811.

Amendments. The 2017 amendment by No. 250 substituted “At least sixty (60)” for “Sixty (60)” in (b)(2)(B)(i).

The 2017 amendment by No. 497 inserted “members of the” in (a); in (b)(1)(A), inserted “and one (1) member shall repre-

sent the Arkansas Municipal Police Association”; substituted “At least sixty (60)” for “Sixty (60)” in (b)(2)(B)(i); and deleted (b)(3).

The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (b)(1)(A); and redesignated (g) as (g)(1), substituted “Director of the Division of Law Enforcement Standards and Training” for “Director of Law Enforcement Standards and Training” in (g)(1), and added (g)(2).

12-9-104. Commission’s powers generally.

In addition to powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training elsewhere in this subchapter, the commission may:

(1)(A) Promulgate rules for the administration of this subchapter.

(B) The rules promulgated by the commission shall not go into full force and effect until the commission seeks the advice of the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor;

(2) Require the submission of reports and information by police departments within this state;

(3)(A) Establish minimum selection and training standards for admission to employment as a law enforcement officer or as a private college or university law enforcement officer.

(B) The minimum selection and training standards may take into account different requirements for urban and rural areas, full-time and part-time employment, and specialized police personnel;

(4) Establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs of schools operated by or for the state and political subdivisions for the specific purpose of training recruits as law enforcement officers;

(5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges,

junior colleges, community colleges, and other institutions or organizations concerning the development of police training schools and programs or courses of instruction;

(6) Approve institutions and facilities to be used by or for the state or any political subdivision of the state for the specific purpose of training law enforcement officers and recruits;

(7) Adopt rules and minimum standards for schools, including without limitation:

(A) The curriculum for:

(i) Probationary police officers, which shall be offered by all certified schools, including without limitation courses on:

(a) Accident investigation;

(b) Arrest;

(c) Civil rights;

(d) Court testimonies;

(e) Criminal law;

(f) Firearms training;

(g) First aid;

(h) Handling of juvenile offenders;

(i) Human relations;

(j) Law of criminal procedure;

(k) Law of evidence;

(l) Physical training;

(m) Race relations and sensitivity;

(n) Recognition of mental conditions that require immediate assistance and methods to safeguard and provide assistance to a person in need of mental treatment;

(o) Reports;

(p) Search and seizure;

(q) Statements;

(r) Techniques of obtaining physical evidence;

(s) Traffic control; and

(t) Vehicle and traffic law; and

(ii) Certified police officers, including without limitation refresher and in-service training in:

(a) Any of the courses listed in subdivision (7)(A)(i) of this section;

(b) Advanced courses in any of the subjects listed in subdivision (7)(A)(i) of this section;

(c) Training for supervisory personnel; and

(d) Specialized training in subjects and fields to be selected by the commission;

(B) Minimum courses of study, attendance requirements, and equipment requirements;

(C) Minimum requirements for instructors; and

(D) Minimum basic training requirements that a probationary police officer must satisfactorily complete before being eligible for certification as a law enforcement officer;

(8) Make and encourage studies of any aspect of police administration;

(9) Conduct and stimulate research by public and private agencies designed to improve police administration and law enforcement;

(10) Make recommendations concerning matters within its purview pursuant to this subchapter;

(11) Make evaluations as may be necessary to determine if governmental units are complying with this subchapter;

(12) Adopt and amend bylaws, consistent with law, for the commission's internal management and control;

(13) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter;

(14) Facilitate training of certified law enforcement officers pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration laws;

(15) In consultation with the Arkansas Association of Chiefs of Police, develop and implement suggested selection and training requirements and nonmandatory basic and advanced levels of certification for chiefs of police;

(16) In consultation with the Arkansas Sheriffs' Association, develop and implement suggested training requirements and nonmandatory basic and advanced levels of certification for county sheriffs;

(17) Adopt rules to implement §§ 14-15-309 and 19-6-821; and

(18) Impose administrative penalties against a law enforcement agency or governmental entity for violations of commission rules as permitted under § 12-9-120.

History. Acts 1975, No. 452, § 6; 1981, No. 427, § 4; 1983, No. 89, § 3; A.S.A. 1947, §§ 42-701.2, 42-1005; Acts 1993, No. 110, § 1; 1997, No. 179, § 8; 2005, No. 907, § 2; 2009, No. 793, § 1; 2013, No. 168, § 1; 2013, No. 227, § 1; 2013, No. 551, § 2; 2017, No. 497, § 4.

Amendments. The 2017 amendment redesignated former (3)(A)(i) and (ii) as

(3)(A) and (3)(B); deleted former (3)(B); substituted "Certified" for "Permanent" in the introductory language of (7)(A)(ii); substituted "certification" for "permanent employment" in (7)(D); deleted former (17); redesignated former (18) as (17); substituted "19-6-821" for "19-6-819" in (17); and added present (18).

12-9-105. Employees.

The Division of Law Enforcement Standards and Training may employ such employees as are necessary to efficiently and effectively carry out this subchapter and as may be authorized by appropriations of the General Assembly.

History. Acts 1975, No. 452, § 7; A.S.A. 1947, § 42-1006; Acts 2011, No. 779, § 3; 2019, No. 910, § 5812.

Amendments. The 2019 amendment

substituted "Division of Law Enforcement Standards and Training" for "Arkansas Commission on Law Enforcement Standards and Training".

12-9-106. Selection and training requirements — Exceptions.

(a)(1) The Arkansas Commission on Law Enforcement Standards and Training shall provide by rule that a person shall not be appointed as a law enforcement officer, except on a temporary basis not to exceed nine (9) months, unless the person has satisfactorily completed a program of police training at a school approved by the commission.

(2) If the executive body of the commission determines that extraordinary circumstances exist, the commission may approve an extension of temporary employment.

(b)(1) In addition to the requirements of subsection (a) of this section and § 12-9-104(7), the commission, by rules, shall fix such other qualifications as it deems necessary.

(2) However, no person who pleads or is found guilty of a felony shall be eligible to be appointed or certified as a law enforcement officer.

(c) The commission shall issue a certificate evidencing satisfaction of the requirements of subsections (a) and (b) of this section to any applicant who presents such evidence as may be required by its rules of satisfactory completion of a program or course of instruction in this or another state conforming to the content and quality required by the commission for approved education and training.

(d) Nothing in this section shall be construed to preclude any employing agency from establishing qualifications and standards for hiring, training, compensating, or promoting law enforcement officers that exceed those set by the commission.

(e)(1) Law enforcement officers already serving under full-time permanent appointment on December 31, 1977, shall not be required to meet the requirements of subsections (a) and (b) of this section as a condition of tenure or continued employment, nor shall failure of any such law enforcement officer to fulfill the requirements make him or her ineligible.

(2) Law enforcement officers employed prior to January 1, 1976, may continue their employment and participate in training programs on a voluntary or assigned basis, but failure to meet standards shall not be grounds for their dismissal or termination of employment. Subsequent termination of employment, whether voluntary or involuntary, shall not result in revocation of this exclusion status but such officers shall have the same powers, privileges, and rights and shall be subject to the same rules and restrictions as are applicable to officers whose certification is based on formal training.

(3) Personnel of law enforcement agencies whose status as to coverage under this subchapter is questionable on December 31, 1977, but who are subsequently determined to be subject thereto, shall have an effective date of compliance enforcement as set by the commission, and personnel employed prior to that date shall be excluded from mandatory compliance therewith.

History. Acts 1975, No. 452, § 8; 1979, 1947, § 42-1007; Acts 1999, No. 1472, § 1; No. 642, § 1; 1983, No. 905, § 1; A.S.A. 2009, No. 793, § 2; 2013, No. 1061, § 1;

2017, No. 497, § 5; 2019, No. 315, §§ 851, 852.

Amendments. The 2017 amendment, in (a)(1), substituted “nine (9) months” for “one (1) year” and deleted “preparatory” preceding “program”; deleted former (a)(2)(A) and redesignated former (a)(2)(B) as (a)(2); in (a)(2), deleted “under

subdivision (a)(2)(A) of this section” following “determines” and “for no more than an eight-month period” at the end.

The 2019 amendment substituted “rule” for “rules and regulations” in (b)(1); and deleted “and regulations” following “rules” in (c).

12-9-107. Training programs.

(a)(1) For the purpose of this subchapter, the Division of Law Enforcement Standards and Training may cooperate with federal, state, and local law enforcement agencies in establishing and conducting instruction and training programs for law enforcement officers of this state, its counties, and municipalities.

(2) Cooperation under subdivision (a)(1) of this section may include without limitation the use of any training facility, equipment, or personnel to conduct training or provide services for any law enforcement or public safety purpose.

(b) The division shall establish and maintain police training programs through such agencies and institutions as the division may deem appropriate to carry out the intent of this subchapter.

(c) The division shall work with each state agency and political subdivision that adheres to the selection and training standards established by the division to provide allowable tuition, living, and training expenses incurred by the officers in attendance at approved training programs.

(d)(1) It is the intent of this subchapter that the expenses of attending the approved training programs established under subsection (c) of this section shall be furnished by the state through the division or any other manner that may be prescribed by the division, and no cost or charge shall be made to any local political subdivision for the actual cost of the training.

(2) The state shall not be liable for the travel cost or any salary in connection with attending any training program.

(3) The division may accept reimbursement from any public or private entity for the use of its training facilities, equipment, or personnel during the providing of services.

(e) The expenses of attending training provided pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security shall be paid in accordance with the provisions of § 12-8-104.

(f) The division shall administer the training and certification program for court security officers under the Arkansas Court Security Act, § 16-10-1001 et seq.

(g)(1) Persons such as doctors, nurses, firefighters, first responders, or other medical personnel, persons engaged in homeland security, or persons otherwise engaged in assisting in the protection of public

welfare and safety who are not law enforcement personnel may attend training or receive instruction at the invitation of the division.

(2) The division may assess a fee on a person invited to attend training or receive instruction under this subsection to reimburse the division for costs associated with the training or instruction under this subsection.

History. Acts 1975, No. 452, § 9; A.S.A. 1947, § 42-1008; Acts 1997, No. 1203, § 4; 2005, No. 907, § 3; 2007, No. 576, § 2; 2011, No. 188, § 1; 2017, No. 497, § 6; 2019, No. 910, § 5813.

Amendments. The 2017 amendment deleted “including provision for training participants under twenty-one (21) years of age in the Arkansas Police Corps Scholarship Program” at the end of (b).

The 2019 amendment substituted “division” for “commission” throughout the section; substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training” in (a)(1); and substituted “division” for “Arkansas Law Enforcement Training Academy” in (d)(1).

12-9-108. Failure to meet qualifications — Effect — Exemptions.

(a)(1) Actions taken by law enforcement officers who do not meet all of the standards and qualifications set forth in this subchapter or made by the Arkansas Commission on Law Enforcement Standards and Training shall not be held invalid merely because of the failure to meet the standards and qualifications.

(2)(A) The Director of Law Enforcement Standards and Training may temporarily suspend a law enforcement officer’s ability to act as a law enforcement officer for failure to meet the standards or qualifications under this subchapter until the failure is corrected or pending review by the commission.

(B) Notification of a suspension under subdivision (a)(2)(A) of this section shall be made in a timely manner to the administrator of the law enforcement agency by which the law enforcement officer is employed.

(b)(1) Nothing in this subchapter or any requirements made by the commission shall prevent any action by a private citizen that is now authorized by law.

(2) No provision of this subchapter shall affect the deputizing of a private citizen by a law enforcement officer in a time of a disaster or emergency.

(3) Nothing in this subchapter or any other law shall prohibit inspectors and code enforcement officers of cities, towns, or counties from issuing citations for the violation of municipal or county codes, ordinances, or regulations that they are charged by their city, town, or county with the duty of enforcing.

(4)(A) Cities of the first class, cities of the second class, and incorporated towns are authorized to employ persons or to contract with private or public corporations, associations, or other entities, whether charitable, nonprofit, or for profit, that employ persons who do not meet certification requirements prescribed by the commission to enforce and execute any or all provisions of a municipal parking

enforcement ordinance, including, but not limited to, the issuance of citations, the collection of fines, and any other parking enforcement process or procedure as may be established by ordinance of the municipality.

(B) Persons employed under this subdivision (b)(4) shall not carry firearms nor take any other official law enforcing action except that enumerated in subdivision (b)(4)(A) of this section.

History. Acts 1975, No. 452, § 10; 1983, No. 763, § 1; 1985, No. 580, §§ 1, 2; A.S.A. 1947, §§ 19-4912, 19-4913, 42-1009; Acts 1989 (3rd Ex. Sess.), No. 44, § 1; 1999, No. 1247, § 1; 2009, No. 204, § 1; 2017, No. 497, § 7.

Amendments. The 2017 amendment redesignated former (a) as (a)(1); and added (a)(2).

12-9-110. Training of civilians to file parking violations and traffic accident reports.

(a) The Arkansas Commission on Law Enforcement Standards and Training shall by rule establish the qualifications including minimum training standards for persons performing law enforcement-related duties pursuant to this section within cities of the first class and within other areas of the State of Arkansas for cadets that are appointed by the Director of the Division of Arkansas State Police.

(b) Municipal police departments of cities of the first class and the Division of Arkansas State Police may employ persons who do not meet certification requirements prescribed by the commission, and the persons may:

(1) Issue citations for parking violations occurring within their respective jurisdictions; and

(2) Prepare traffic accident reports and issue any related traffic citations.

(c) Persons employed under this section shall not carry firearms or take any other official law enforcement action except as prescribed by this section.

(d)(1) Persons performing law enforcement duties pursuant to this section shall complete all training and meet all minimum standards prescribed by the commission for the exercise of that authority.

(2) However, the division and cities of the first class may establish more stringent training requirements.

History. Acts 1995, No. 910, § 1; 2001, No. 250, § 1; 2003, No. 1111, § 1; 2007, No. 137, § 1; 2019, No. 315, § 853; 2019, No. 910, §§ 5814-5816.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (a).

The 2019 amendment by No. 910 substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a) and (b); and “division” for “department” in (d)(2).

12-9-111. Uniforms.

(a) The Arkansas Commission on Law Enforcement Standards and Training is exempt from § 19-6-109(c) for the purpose of buying uniforms for students and law enforcement officers employed by the Division of Law Enforcement Standards and Training.

(b) The amount spent for the purchase of uniforms under subsection (a) of this section in any one (1) year is limited to forty thousand dollars (\$40,000).

History. Acts 1999, No. 1022, § 7; 2017, No. 497, § 8; 2018, No. 202, § 9; 2019, No. 910, § 5817.

Amendments. The 2017 amendment added “and law enforcement officers employed by the commission” at the end of (a).

The 2018 amendment, in (a), deleted “After seeking prior review by the Legis-

lative Council or Joint Budget Committee and approval by the Chief Fiscal Officer of the State” from the beginning and substituted “is” for “shall be”; and, in (b), inserted “under subsection (a) of this section” and substituted “is” for “shall be”.

The 2019 amendment substituted “Division of Law Enforcement Standards and Training” for “commission” in (a).

12-9-115. Training for constables.

After consultation with the Arkansas Constables Association, Inc., the Division of Law Enforcement Standards and Training shall develop and certify a training course of one hundred ten (110) hours to one hundred sixty (160) hours for constables in accordance with § 14-14-1314.

History. Acts 2007, No. 841, § 3; 2017, No. 497, § 9; 2019, No. 910, § 5818.

Amendments. The 2017 amendment inserted “and certify”, substituted “one hundred ten (110)” for “one hundred twenty (120)”, and substituted “for constables in accordance with § 14-14-1314” for “for certifying new constables”.

The 2019 amendment substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training”.

12-9-117. Award of pistol upon retirement or death of a certified law enforcement officer employed by the division.

(a) When a certified law enforcement officer employed by the Division of Law Enforcement Standards and Training or a state-funded law enforcement training academy retires from service or dies while still employed with the division or the state-funded law enforcement training academy, in recognition of and appreciation for the service of the retiring or deceased certified law enforcement officer, the division or the state-funded law enforcement training academy may award the pistol carried by the certified law enforcement officer at the time of his or her death or retirement from service to:

- (1) The certified law enforcement officer; or
- (2) The certified law enforcement officer’s spouse if the spouse is eligible under applicable state and federal laws to possess a firearm.

(b)(1) A certified law enforcement officer employed by the division or a state-funded law enforcement training academy may retain his or her pistol he or she carried at the time of his or her retirement from service.

(2) If the certified law enforcement officer dies while he or she is employed by the division or a state-funded law enforcement training academy, his or her spouse may receive or retain the pistol carried by the certified law enforcement officer at the time of his or her death, if the spouse is eligible under applicable state and federal laws to possess a firearm.

History. Acts 2015, No. 391, § 1; 2017, No. 183, § 1; 2017, No. 845, § 1; 2019, No. 910, § 5819.

A.C.R.C. Notes. Pursuant to Acts 2017, No. 845, § 6, this section is set out as amended by Acts 2017, No. 183, § 1. Acts 2017, No. 845, § 1, would have repealed subsection (b) of this section.

Acts 2017, No. 845, § 6, provided: “CONSTRUCTION AND LEGISLATIVE INTENT. It is the intent of the General Assembly that:

“(1) The enactment and adoption of this act shall not expressly or impliedly repeal an act passed during the regular session of the Ninety-First General Assembly;

“(2) To the extent that a conflict exists between an act of the regular session of the Ninety-First General Assembly and this act:

“(A) The act of the regular session of the Ninety-First General Assembly shall be treated as a subsequent act passed by the General Assembly for the purpose of:

“(i) Giving the act of the regular session of the Ninety-First General Assembly its full force and effect; and

“(ii) Amending or repealing the appropriate parts of the Arkansas Code of 1987; and

“(B) Section 1-2-107 shall not apply; and

“(3) This act shall make only technical, not substantive, changes to the Arkansas Code of 1987.”

Amendments. The 2017 amendment by No. 183 inserted “or a state-funded law enforcement training academy” and similar language throughout the section.

The 2017 amendment by No. 845 deleted the (a) designation and deleted (b).

The 2019 amendment substituted “division” for “commission” in the section heading and throughout the section; and substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training” in the introductory language of (a).

12-9-118. New or inactive law enforcement agency — Approval by commission required — Definition.

(a) As used in this section, “inactive law enforcement agency” means a law enforcement agency that existed and operated under a state law or local ordinance in the past but that currently does not exist or has not operated for at least one (1) year.

(b) The chief executive officer of an entity authorized by law to create a new law enforcement agency or reactivate an inactive law enforcement agency shall appear before the Arkansas Commission on Law Enforcement Standards and Training to request the creation of the new law enforcement agency or reactivation of the inactive law enforcement agency and present the law and documentation regarding:

(1) The funding mechanism, funding source or sources, and current budget proposal for the law enforcement agency;

(2) The proposed or enacted law enforcement agency policies, including without limitation policies regarding:

- (A) Use of force;
- (B) Vehicle pursuit;
- (C) Professional conduct of law enforcement officers to be employed by the law enforcement agency; and
- (D) Biased-based policing;
- (3) The administrative structure and organizational chart of the law enforcement agency; and
- (4) Any other information or documentation required by the commission.

(c) After the appearance and presentation under subsection (b) of this section, the commission shall approve or disapprove the request to create the new law enforcement agency or reactivate the inactive law enforcement agency.

History. Acts 2017, No. 378, § 1; 2019, No. 151, § 1. introductory language of (b), substituted “by law” for “by ordinance” and “the law

Amendments. The 2019 amendment inserted “state law or” in (a); and, in the and” for “the ordinance and”.

12-9-119. Behavioral health crisis intervention training.

(a)(1) In accordance with the certification requirements of the Arkansas Commission on Law Enforcement Standards and Training for law enforcement officers, a law enforcement officer enrolled in a commission-certified basic police training academy shall complete at least sixteen (16) hours of training relating to behavioral health crisis intervention in a law enforcement context.

(2) Practicum training is sufficient for the requirement under subdivision (a)(1) of this section.

(b) Training under subsection (a) of this section shall include without limitation:

- (1) The dynamics of relating to an individual:
 - (A) With a behavioral health impairment as defined in § 20-47-803;
 - (B) Who has demonstrated a substantial likelihood of committing bodily harm against himself or herself;
 - (C) Who has demonstrated a substantial likelihood of committing bodily harm against another person; or
 - (D) Who is under the influence of alcohol or a controlled substance to the extent that the individual’s judgment and decision-making process is impaired;
 - (2) Available mental health service providers and support services;
 - (3) The voluntary and involuntary commitment process;
 - (4) Law enforcement interaction with hospitals, mental health professionals, the judiciary, and the mental health services community; and
 - (5) Practices to promote the safety of law enforcement officers and the public.
- (c) The commission shall certify:

(1) Specialized training for qualified law enforcement officers of at least eight (8) hours; and

(2)(A) Crisis intervention team training of at least forty (40) hours taught over five (5) consecutive days.

(B) Crisis intervention team training under subdivision (c)(2)(A) of this section shall emphasize understanding of behavioral impairments and mental illnesses and shall incorporate the development of communication skills, practical experience, and role-playing.

(C) Participants in the crisis intervention team training under subdivision (c)(2)(A) of this section shall be introduced to mental health professionals, consumers, and family members in both the classroom and through onsite visits.

(d)(1) A local law enforcement agency, including a county sheriff's office, but not a municipal law enforcement agency that employs less than ten (10) full-time law enforcement officers, shall employ at least one (1) law enforcement officer who has completed within eighteen (18) months of August 1, 2017, the crisis intervention team training as described under subdivision (c)(2) of this section.

(2) A local law enforcement agency, including a county sheriff's office, is encouraged to:

(A) Have at least twenty percent (20%) of the certified law enforcement officers that it employs complete the crisis intervention team training offered under subdivision (c)(2) of this section;

(B) Develop and implement a model policy addressing law enforcement response to persons affected by a behavioral impairment; and

(C) Establish a clearly defined and sustainable partnership with one (1) or more community mental health organizations.

(e) All training required under this section and the curriculum for the training shall be developed by the Division of Law Enforcement Standards and Training, in collaboration with the Criminal Justice Institute.

History. Acts 2017, No. 423, § 7; 2019, No. 910, § 5820. substituted "Division of Law Enforcement Standards and Training" for "commission"

Amendments. The 2019 amendment in (e).

12-9-120. Imposition of administrative penalties.

(a) When determining the amount of an administrative penalty assessed against a law enforcement agency or governmental entity under subsection (b) of this section for violation of a rule of the Arkansas Commission on Law Enforcement Standards and Training, the commission shall consider:

(1) The seriousness of the violation;

(2) The law enforcement agency's or governmental entity's history of violations;

(3) The amount the commission believes is necessary to deter future similar violations;

(4) Efforts made by the law enforcement agency or governmental entity to correct the violation, including the immediacy and degree of corrective action; and

(5) Any other consideration that the commission believes important.

(b)(1) An administrative penalty may be assessed under this section in the following amounts:

(A) For appointing a person who does not meet minimum standards as a law enforcement officer, an administrative penalty of no more than one thousand dollars (\$1,000); and

(B) For failing to timely submit any required appointment or separation documents, an administrative penalty of no more than three hundred fifty dollars (\$350).

(2) The administrative penalties authorized under this subsection may be assessed on a per-day basis, with each day considered a separate violation.

(c) The presence of mitigating factors does not require the commission to dismiss a violation of commission rules.

(d)(1) The Director of Law Enforcement Standards and Training may enter into an agreed-upon order concerning administrative penalties under this section with a law enforcement agency or governmental entity, subject to final approval of the commission.

(2) The agreed-upon order under subdivision (d)(1) of this section may be in an amount that differs from the amounts in subdivision (b)(1) of this section.

(e)(1) The commission shall provide written notice to a law enforcement agency or governmental entity of an alleged violation of a rule, and the law enforcement agency or governmental entity shall respond in writing within thirty (30) days of receipt of the written notice.

(2) A law enforcement agency's or governmental entity's failure to respond within thirty (30) days of the written notice under subdivision (e)(1) of this section may result in the entry of a default order of assessment of an administrative penalty.

(f) A law enforcement agency or governmental entity may request a hearing before the commission to contest the allegations set forth in the written notice under subsection (e) of this section within thirty (30) days of receipt of the written notice.

History. Acts 2017, No. 497, § 10.

12-9-121. Additional salary payment.

(a)(1) The Division of Law Enforcement Standards and Training may make additional salary payments from available funds to employees of the division who have attained law enforcement certification above the basic certificate level, as defined by the Division of Law Enforcement Standards and Training.

(2) The award of an additional salary payment under this section is contingent upon the:

(A) Existence of sufficient funding independent of funding specifically set aside for other programs within the division; and

(B) Discretion of the Director of the Division of Law Enforcement Standards and Training in coordination with the Secretary of the Department of Public Safety.

(b)(1) Eligible employees of the division may be paid up to the following annual amounts for the respective certifications:

(A) General certificate — three hundred dollars (\$300);

(B) Intermediate certificate — six hundred dollars (\$600);

(C) Advanced certificate — nine hundred dollars (\$900); and

(D) Senior certificate — one thousand two hundred dollars (\$1,200).

(2) Payment of the additional salary amounts may be made monthly, quarterly, semiannually, or annually depending upon the availability of funding and is restricted to full-time law enforcement officers employed by the division.

(c) Additional salary payments made under this section are considered part of the employee's regular income and subject to all applicable withholding required by law.

History. Acts 2017, No. 631, § 1; 2019, No. 910, § 5821.

Amendments. The 2019 amendment, in (a)(1), substituted "Division of Law Enforcement Standards and Training" for "Arkansas Commission on Law Enforcement Standards and Training" near the beginning, substituted "employees of the

division" for "employees of the commission", and substituted "Division of Law Enforcement Standards and Training" for "commission" at the end; substituted "division" for "commission" in (a)(2)(A); rewrote (a)(2)(B); and substituted "division" for "commission" in the introductory language of (b)(1) and in (b)(2).

12-9-122. Controlled substance overdose identification training — Definition.

(a) As used in this section, "naloxone" means a drug that is an analgesic antagonist used in the reversal of acute respiratory depression caused by opioid use.

(b)(1) The Arkansas Commission on Law Enforcement Standards and Training in conjunction with the Arkansas Drug Director and the Criminal Justice Institute shall develop a curriculum for law enforcement training relating to identifying the signs that a person is experiencing an overdose of a controlled substance and the ways in which a law enforcement officer can safely assist the person who has overdosed.

(2) A curriculum that is developed under subdivision (b)(1) of this section and certified by the commission shall be delivered to a student attending a basic law enforcement training course certified by the commission.

(c) Training under subsection (b) of this section shall include without limitation:

(1) The signs and symptoms of an overdose associated with the use of a controlled substance, including opioids;

(2) First-responder treatment and triage for a controlled substance overdose situation;

(3) First-responder safety considerations in a potential or actual controlled substance overdose situation; and

(4) An overview of the role of naloxone in certain opioid overdose situations.

(d) All law enforcement agencies are encouraged to develop a naloxone program by seeking assistance from the Arkansas Drug Director's office or the Criminal Justice Institute, or both.

History. Acts 2019, No. 646, § 1.

12-9-123. Missing and unidentified persons training.

(a)(1) In accordance with the certification requirements of the Arkansas Commission on Law Enforcement Standards and Training, all law enforcement officers in the state shall complete training related to the investigation of unidentified and missing persons.

(2) Practicum training shall also be sufficient for the requirement under subdivision (a)(1) of this section.

(b) Training under subsection (a) of this section may include training conducted in conjunction with resources available through the National Missing and Unidentified Persons System.

History. Acts 2019, No. 920, § 1.

SUBCHAPTER 2 — LAW ENFORCEMENT TRAINING ACADEMY

SECTION.

12-9-202. Location of academy.

12-9-203. Acceptance of gifts, grants, etc.
— Disposition.

12-9-204. Arkansas Commission on Law Enforcement Standards and Training — Law enforcement powers.

12-9-205. [Repealed.]

12-9-207. Newly elected or unopposed candidates for county sheriff.

SECTION.

12-9-208. State Capitol Police — Training course.

12-9-209. Reimbursement for training costs.

12-9-210. Designated law enforcement agencies.

12-9-211. Private college or university law enforcement officers.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two

uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through

6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-9-202. Location of academy.

The Arkansas Law Enforcement Training Academy shall be located at a place which, in the opinion of the Director of the Division of Law Enforcement Standards and Training, will serve the best interests of the state in the carrying out of the intent and purposes of this subchapter.

History. Acts 1963, No. 526, § 3; 1965, No. 172, § 2; A.S.A. 1947, § 42-703; Acts 2019, No. 910, § 5822.

Amendments. The 2019 amendment substituted “Director of the Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training”.

12-9-203. Acceptance of gifts, grants, etc. — Disposition.

(a) The Division of Law Enforcement Standards and Training may accept gifts, grants, donations, equipment and materials, and bequests of money or gratuities donated by private persons or corporations.

(b) All moneys received under subsection (a) of this section shall be deposited into the Arkansas Law Enforcement Training Academy Cash Fund.

History. Acts 1969, No. 608, § 7; 2017, No. 497, § 11; 2019, No. 910, § 5823.

Amendments. The 2017 amendment substituted “The Arkansas Commission on Law Enforcement Standards and Training may” for “The Arkansas Law Enforcement Training Academy is granted authority to” in (a); and, in (b), substituted “All moneys received under subsection (a) of this section” for “All such

money so received” and “Arkansas Law Enforcement Training Academy Cash Fund” for “State Treasury to the credit of the Miscellaneous Agencies Fund Account of the State General Government Fund”. The 2019 amendment substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training” in (a).

12-9-204. Arkansas Commission on Law Enforcement Standards and Training — Law enforcement powers.

(a) The following persons are classified and designated as law enforcement officers after meeting minimum qualifications for law enforcement officers’ certification as established by the Arkansas Commission on Law Enforcement Standards and Training:

(1) The Director of the Division of Law Enforcement Standards and Training;

(2) Employees of the Division of Law Enforcement Standards and Training appointed by the Director of the Division of Law Enforcement Standards and Training as law enforcement officers;

(3) The Director of the Black River Technical College Law Enforcement Training Academy; and

(4) Instructors of the Black River Technical College Law Enforcement Training Academy.

(b)(1) The personnel described in subsection (a) of this section have all authority and functions of other law enforcement officers in the State of Arkansas.

(2) The personnel described in subsection (a) of this section have general law enforcement authority to cooperate with, assist, and support local law enforcement officers in all law enforcement activities and functions.

(c) The personnel described in subsection (a) of this section shall:

(1) Be credited with service toward maintaining and increasing certification levels for time employed at the Arkansas Commission on Law Enforcement Standards and Training or the division and the Black River Technical College Law Enforcement Training Academy; and

(2) Receive credit for years of law enforcement service for time employed at the commission or the division, the Arkansas Police Corps Program at the University of Arkansas at Little Rock, or the Black River Technical College Law Enforcement Training Academy upon employment as law enforcement officers elsewhere in the State of Arkansas.

(d) The personnel described in subsection (a) of this section:

(1) Are not qualified to enroll in a different retirement system because of their classification and designation as law enforcement officers; and

(2) Shall not qualify for any benefit enhancement other than that available under their current retirement system.

History. Acts 1979, No. 147, § 1; A.S.A. 1947, § 42-708; Acts 1995, No. 365, § 1; 2003, No. 1051, § 1; 2005, No. 1330, § 1; 2017, No. 497, § 12; 2019, No. 910, §§ 5824, 5825.

Amendments. The 2017 amendment substituted “Arkansas Commission on Law Enforcement Standards and Training” for “Academy instructors” in the section heading; rewrote (a); substituted “described in subsection (a) of this section have” for “shall have and exercise” in (b)(1); substituted “described in subsection (a) of this section” for “shall” in (b)(2);

inserted “described in subsection (a) of this section” in the introductory language of (c); substituted “commission” for “Arkansas Law Enforcement Training Academy” in (c)(1) and (c)(2); and rewrote (d).

The 2019 amendment substituted “Director of the Division of Law Enforcement Standards and Training” for “Director of Law Enforcement Standards and Training” in (a)(1); rewrote (a)(2); and substituted “Arkansas Commission on Law Enforcement Standards and Training or the division” for “commission” in (c)(1); and inserted “or the division” in (c)(2).

12-9-205. [Repealed.]

Publisher’s Notes. This section, concerning approval of applications, was repealed by Acts 2017, No. 497, § 13. The

section was derived from Acts 1963, No. 526, § 2; A.S.A. 1947, § 42-702.

12-9-207. Newly elected or unopposed candidates for county sheriff.

(a) A newly elected county sheriff or unopposed candidate for the position of county sheriff may attend a state-funded law enforcement training academy for purposes of training and instruction.

(b) The county in which the newly elected county sheriff or unopposed candidate for the position of county sheriff is to be employed shall pay any necessary transportation costs in traveling to and from the state-funded law enforcement training academy.

History. Acts 1975, No. 183, §§ 1, 2; **Amendments.** The 2017 amendment A.S.A. 1947, §§ 42-706, 42-707; Acts 2017, rewrote the section. No. 183, § 2.

12-9-208. State Capitol Police — Training course.

All members of the State Capitol Police shall satisfactorily complete the training course for law enforcement officers at the Arkansas Law Enforcement Training Academy within nine (9) months of their hire date or any extension granted by the Arkansas Commission on Law Enforcement Standards and Training.

History. Acts 1987, No. 468, § 1; 2017, preceding “months” and added “or any extension granted by the Arkansas Commission on Law Enforcement Standards and Training”. No. 497, § 14.

Amendments. The 2017 amendment substituted “nine (9)” for “twelve (12)”

12-9-209. Reimbursement for training costs.

(a)(1) If a county, city, town, or state agency pays the cost or expenses for training a law enforcement officer at a state-funded law enforcement training academy and another county, city, town, or state agency employs that law enforcement officer within eighteen (18) months after completion of the training in a position requiring a certificate of training from the state-funded law enforcement training academy, the county, city, town, or state agency so employing the law enforcement officer, at the time of employing the law enforcement officer, shall reimburse the county, city, town, or state agency for all or a portion of the expenses incurred by the county, city, town, or state agency for the training of the law enforcement officer at the state-funded law enforcement training academy, unless the law enforcement officer has been terminated by the county, city, town, or state agency that paid the costs or expenses of training, in which case no reimbursement is required from the county, city, town, or state agency hiring the law enforcement officer.

(2) Reimbursement may be sought only from the first county, city, town, or state agency that employed the law enforcement officer after the county, city, town, or state agency paid the costs or expenses of training.

(3) Reimbursement shall include any salary, travel expenses, food, lodging, or other costs required to be paid by the county, city, town, or state agency, as follows:

(A) If the person is employed within two (2) months after completion of the training, the employing agency shall reimburse the total cost of the training;

(B) If the person is employed more than two (2) months but not more than six (6) months after completion of the training, the employing agency shall reimburse eighty percent (80%) of the cost of the training;

(C) If the person is employed more than six (6) months but not more than ten (10) months after completion of the training, the employing agency shall reimburse sixty percent (60%) of the cost of the training;

(D) If the person is employed more than ten (10) months but not more than fourteen (14) months after completion of the training, the employing agency shall reimburse forty percent (40%) of the cost of the training; or

(E) If the person is employed more than fourteen (14) months but not more than eighteen (18) months after completion of the training, the employing agency shall reimburse twenty percent (20%) of the cost of the training.

(b)(1) If any county, city, town, or state agency which employs an officer whose training expense was paid by another county, city, town, or state agency fails to make reimbursement for the expenses as required in subsection (a) of this section, the county, city, town, or state agency entitled to reimbursement shall notify the Treasurer of State.

(2) The Treasurer of State shall then withhold the amount of the reimbursement due for training the officer from the county or municipal aid of the employing county, city, town, or state agency or from funds appropriated to the employing state agency and shall remit the amount to the county, city, town, or state agency which is entitled to the reimbursement under the provisions of this section.

History. Acts 1987, No. 880, §§ 1, 2; 1993, No. 191, § 1; 2017, No. 183, § 3; 2019, No. 151, § 2.

Amendments. The 2017 amendment rewrote (a)(1) and (a)(2).

The 2019 amendment deleted "Counties, cities, etc." from the beginning of the section heading; inserted "or state agency" throughout the section; and made stylistic changes.

12-9-210. Designated law enforcement agencies.

The Division of Law Enforcement Standards and Training and the Black River Technical College Law Enforcement Training Academy are designated as law enforcement agencies.

History. Acts 2011, No. 272, § 1; 2017, No. 497, § 15; 2019, No. 910, § 5826.

Amendments. The 2017 amendment deleted the (a) designation; substituted

"The Arkansas Commission on Law Enforcement Standards and Training" for "The Arkansas Law Enforcement Training Academy"; and deleted former (b).

The 2019 amendment substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training”.

12-9-211. Private college or university law enforcement officers.

(a) A law enforcement officer for a private college or university is permitted to attend the Arkansas Law Enforcement Training Academy for training and instruction.

(b) The private college or university for which the law enforcement officer is employed shall:

(1) Pay any necessary transportation cost in traveling to and from the academy; and

(2) Reimburse the Division of Law Enforcement Standards and Training for any cost associated with the private college or university law enforcement officer’s training or instruction at the academy.

History. Acts 2013, No. 227, § 2; 2019, No. 910, § 5827.

Amendments. The 2019 amendment substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training” in (b)(2).

SUBCHAPTER 3 — AUXILIARY LAW ENFORCEMENT OFFICERS

| SECTION. | SECTION. |
|----------------------------------------------------------------------------------------------|--------------------------------------------------|
| 12-9-301. Definitions. | 12-9-304. Appointment and training requirements. |
| 12-9-302. Arkansas Commission on Law Enforcement Standards and Training — Powers and duties. | 12-9-306. Number restricted. |
| | 12-9-307. Benefits. |

12-9-301. Definitions.

As used in this subchapter:

(1) “Auxiliary law enforcement officer” means a person who meets the minimum standards and training requirements prescribed for auxiliary law enforcement officers by law and rules, and who is appointed by a political subdivision or a law enforcement agency as a reserve officer, but does not include any law enforcement officer or deputy county sheriff employed by a planned community property owners’ association;

(2) “Commission” means the Arkansas Commission on Law Enforcement Standards and Training as established by § 12-9-103;

(3) “Direct supervision” means having a designated on-duty, full-time certified law enforcement officer responsible for the direction, conduct, and performance of the auxiliary law enforcement officer when that auxiliary law enforcement officer is working an assigned duty, but does not mean that the full-time certified law enforcement officer must be in the physical presence of the auxiliary law enforcement officer when the auxiliary law enforcement officer is working an assigned duty;

(4) “Honorary police officer” means any person having no law enforcement authority except as a private citizen;

(5) “Law enforcement agency” means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal, traffic, or highway laws of this state;

(6) “Law enforcement officer” means any appointed law enforcement officer or county sheriff who is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state;

(7) “Part-time law enforcement officer” means, as applied to employment and training requirements, a law enforcement officer who works twenty-four (24) hours per week or less and receives a salary from the employing law enforcement agency; and

(8) “Political subdivision” means any county, municipality, township, or other specific local unit of general government.

History. Acts 1983, No. 757, § 1; A.S.A. 1947, § 42-1401; Acts 1994 (2nd Ex. Sess.), No. 12, § 1; 2017, No. 497, § 16; 2019, No. 151, § 3.

Amendments. The 2017 amendment, in (1), substituted “auxiliary law enforcement officers” for “such officers” and “rules” for “regulations”, deleted “volunteer officer, or mounted patrol” following

“reserve officer”, and inserted “law enforcement” following “but does not include any”.

The 2019 amendment substituted “a law enforcement officer who works twenty-four (24) hours per week or less and receives” for “any officer working less than twenty (20) hours per week and receiving” in (7).

12-9-302. Arkansas Commission on Law Enforcement Standards and Training — Powers and duties.

In addition to the powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training in §§ 12-9-104 — 12-9-107, the commission shall have power to:

- (1) Promulgate rules for the administration of this subchapter;
- (2) Require the submission of reports and information by law enforcement agencies within this state;
- (3)(A) Establish minimum selection and training standards for admission to appointment as an auxiliary law enforcement officer. The standards may take into account different requirements for urban and rural areas.
- (B) However, the minimum selection and training standards for admission to appointment may not exceed those required for part-time law enforcement officers;
- (4) Establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs of schools operated by and for the training of auxiliary law enforcement officers;
- (5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police training schools and programs or courses of instruction;
- (6) Approve institutions and facilities to be used by or for the state or any political subdivision thereof for the specific purpose of training law enforcement officers and recruits;

(7) Exclude auxiliary law enforcement officers from the full-time basic training classes sponsored and supported by the commission;

(8) Adopt rules and minimum standards for such schools which shall include, but not be limited to, establishing minimum:

(A) Basic training requirements which an auxiliary law enforcement officer must satisfactorily complete before being eligible for appointment;

(B) Course attendance and equipment requirements; and

(C) Requirements for instructors;

(9) Conduct review of agency records to assist any department head in complying with the provisions of this subchapter;

(10) Adopt and amend bylaws, consistent with law, for its internal management and control; and

(11) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter.

History. Acts 1983, No. 757, § 2; A.S.A. substituted “commission” for “Arkansas 1947, § 42-1402; Acts 2017, No. 497, § 17; Law Enforcement Training Academy”.
2019, No. 315, § 854. The 2019 amendment deleted “and

Amendments. The 2017 amendment, regulations” following “rules” in (1).
in (7), inserted “the full-time basic” and

12-9-304. Appointment and training requirements.

(a)(1) A person shall not function as an auxiliary law enforcement officer until the minimum standards for appointment and training requirements have been completed.

(2) An auxiliary law enforcement officer who has not met the minimum standards for appointment and training requirements shall have no law enforcement authority except that which is authorized for a private citizen.

(b) All persons who are serving as auxiliary law enforcement officers prior to March 24, 1983, are exempt from meeting the appointment requirements.

(c) The training requirements for auxiliary law enforcement officers shall be established by the Arkansas Commission on Law Enforcement Standards and Training, and the basic training course shall not exceed the part-time law enforcement officers’ training requirements.

(d) Honorary police officers are exempt from the provisions of this subchapter.

(e) The commission may issue a certificate evidencing satisfactory completion of the requirements of this subchapter when evidence is submitted by the law enforcement agency director, chief, or county sheriff that the auxiliary law enforcement officer has met the training and selection requirements.

(f)(1) The appointing law enforcement agency shall provide not less than one hundred ten (110) hours of commission-approved law enforcement training, which shall include a firearms qualification course equivalent to the firearms qualification requirements for a full-time law enforcement officer, and an auxiliary law enforcement officer shall not

bear a firearm until having successfully completed the commission-approved law enforcement training.

(2) An auxiliary law enforcement officer is not required to requalify for firearms qualification beyond what a full-time law enforcement officer is required to complete for requalification for the purposes of carrying a concealed handgun while the auxiliary law enforcement officer remains appointed as an auxiliary law enforcement officer.

(g) Nothing in this section shall be construed to preclude any law enforcement agency from establishing qualifications and standards for appointing and training of auxiliary law enforcement officers that exceed those set by this subchapter or by the commission.

(h) Any auxiliary law enforcement officer failing to meet the training requirements as set forth in this subchapter shall lose his or her appointment as auxiliary law enforcement officer and shall not be reappointed until training requirements have been met.

(i) No person may be appointed or serve as an auxiliary law enforcement officer if the person has been convicted by a state or by the federal government of a crime, the punishment for which could have been imprisonment in a federal penitentiary or a state prison.

(j) Every person appointed or serving as an auxiliary law enforcement officer shall be a citizen of the United States and shall be at least twenty-one (21) years of age.

History. Acts 1983, No. 757, § 4; A.S.A. 1947, § 42-1404; Acts 2017, No. 497, § 18; 2017, No. 957, § 3; 2019, No. 151, § 4.

Amendments. The 2017 amendment by No. 497, in (f) [now (f)(1)], substituted "The appointing law enforcement agency shall provide" for "It shall be the responsibility of the appointing law enforcement agency to provide or have provided", substituted "one hundred ten (110)" for "one hundred (100)", inserted "commission-approved law enforcement" preceding the

last occurrence of "training", and made stylistic changes.

The 2017 amendment by No. 957 redesignated former (f) as (f)(1) and added (f)(2).

The 2019 amendment substituted "A person shall not function" for "No person shall be appointed" in (a)(1); and, in (a)(2), substituted "An" for "Any" and "the minimum standards for appointment and training" for "these".

12-9-306. Number restricted.

(a)(1) A political subdivision may appoint auxiliary law enforcement officers equal to the larger number of:

(A) Two (2) auxiliary law enforcement officers for each full-time certified law enforcement officer employed by the appointing law enforcement agency; or

(B) One (1) auxiliary law enforcement officer for each one thousand (1,000) persons in the political subdivision as determined by the latest official census.

(2)(A) However, if due to special or unusual problems or circumstances, any political subdivision has a need for a greater number of auxiliary law enforcement officers than is authorized in subdivision (a)(1)(A) or subdivision (a)(1)(B) of this section, the political subdivision may make a request to the Arkansas Commission on Law

Enforcement Standards and Training for the additional auxiliary law enforcement officers.

(B) Each request under subdivision (a)(2)(A) of this section shall state the special or unusual problems involved which justify the request, the number of additional auxiliary law enforcement officers requested, and such other information as the commission may require.

(C) If the commission finds that the public interest will best be served by allowing the political subdivision to appoint the additional auxiliary law enforcement officers requested, the commission may grant the request under subdivision (a)(2)(A) of this section.

(b) Honorary police officers without law enforcement authority are not restricted in number by this section.

(c) The limitation concerning the number of auxiliary law enforcement officers allowed to be appointed by a law enforcement agency under this section does not apply to additional auxiliary law enforcement officers appointed by political subdivisions to serve as school resource officers or search and rescue officers.

History. Acts 1983, No. 757, § 6; A.S.A. 1947, § 42-1406; Acts 2013, No. 705, § 1; 2017, No. 497, § 19.

Amendments. The 2017 amendment, in (a)(1), deleted the former first sentence, substituted “A political” for “Further, the

political”, and substituted “appoint auxiliary” for “appoint more auxiliary”; inserted “under subdivision (a)(2)(A) of this section” in (a)(2)(B) and (C); and made stylistic changes.

12-9-307. Benefits.

(a) The auxiliary law enforcement officer or the governing political subdivision may elect to join the workers’ compensation system for the benefit of the auxiliary law enforcement officer, and the auxiliary law enforcement officer may receive benefits therefrom as provided by statutes.

(b) The political subdivision may elect to provide liability insurance, uniforms, and such other equipment as may be necessary to perform the assigned tasks, and these provisions shall not be considered as salary or wages.

(c) An auxiliary law enforcement officer may receive such compensation, per diem, expenses, or other allowances for his or her services, for such purposes as transporting juveniles, as may be agreed to by the appointing authority.

History. Acts 1983, No. 757, § 7; A.S.A. 1947, § 42-1407; Acts 1994 (2nd Ex. Sess.), No. 12, § 2; 2019, No. 151, § 5.

Amendments. The 2019 amendment deleted former (b) and redesignated former (c) and (d) as present (b) and (c).

SUBCHAPTER 4 — RADAR INSTRUCTORS AND OPERATORS

SECTION.

12-9-401. Definitions.

12-9-402. Powers and duties of the commission.

SECTION.

12-9-403. Appointment and training.

12-9-401. Definitions.

As used in this subchapter:

(1) “Full-time law enforcement officer” means any county sheriff, or any other law enforcement officer employed by a law enforcement agency who works more than twenty-four (24) hours per week and receives a salary from the law enforcement agency;

(2) “Law enforcement agency” means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal, traffic, or highway laws of this state;

(3) “Law enforcement officer” means any appointed law enforcement officer or county sheriff who is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state;

(4) “Part-time law enforcement officer” means a law enforcement officer who works twenty-four (24) hours per week or less and receives a salary from the employing law enforcement agency;

(5) “Police traffic radar” means any speed measurement device utilizing the Doppler principle or an infrared light system to measure the speed of motor vehicles; and

(6) “Political subdivision” means any county, municipality, township, or other specific local unit of general government.

History. Acts 1983, No. 672, § 1; 1985, No. 115, § 1; A.S.A. 1947, § 42-1010; Acts 1991, No. 374, § 1; 1993, No. 63, § 1; 1997, No. 1105, § 1; 2017, No. 497, § 20; 2019, No. 151, § 6.

Amendments. The 2017 amendment, in (2), substituted “and receives a salary from the law enforcement agency” for “or any part-time law enforcement officer employed by a law enforcement agency who has met the selection and training requirements for full-time certified officers”.

The 2019 amendment deleted former (1) and redesignated the remaining subdivisions accordingly; in (1), inserted “any other law enforcement”, and substituted “more than twenty-four (24) hours” for “forty (40) or more hours”; and, in (4), substituted “a law enforcement officer who works twenty-four (24) hours per week or less and receives” for “any officer working less than twenty (20) hours per week and receiving”.

12-9-402. Powers and duties of the commission.

In addition to the powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training in §§ 12-9-104 — 12-9-107, the commission shall have power to:

(1) Promulgate rules for the administration of this subchapter;

(2) Require the submission of reports and information by law enforcement agencies within this state;

(3) Establish minimum selection and training standards for appointment as a police traffic radar operator and police traffic radar instructor. The standards may take into account different requirements for urban and rural areas;

(4) Establish minimum curriculum requirements for the basic radar operator's course, the basic radar instructor's course, and the refresher courses for the radar operators and the radar instructors;

(5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police traffic radar training schools and programs or courses of instruction;

(6) Approve institutions and facilities to be used by or for the state or any political subdivision thereof for the specific purpose of training radar operators and radar instructors;

(7) Exclude honorary law enforcement officers from training classes sponsored and supported by the Arkansas Law Enforcement Training Academy for the training of radar operators and radar instructors;

(8) Adopt rules and minimum standards for such schools and courses which shall include, but not be limited to, establishing minimum:

(A) Basic training requirements which police radar operators and police radar instructors are required to satisfactorily complete before being eligible for radar certification;

(B) Course attendance and equipment requirements; and

(C) Requirements for instructors;

(9) Conduct review of agency records to assist any department head in complying with the provisions of this subchapter;

(10) Adopt and amend bylaws, consistent with law, for its internal management and control; and

(11) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter.

History. Acts 1983, No. 672, § 2; A.S.A. 1947, § 42-1011; Acts 2011, No. 1240, § 2; 2017, No. 497, § 21; 2019, No. 315, § 855.

Amendments. The 2017 amendment deleted "part-time law enforcement officers and" following "Exclude" in (7); and,

in (8)(A), deleted "and refresher" following "Basic" and substituted "are required to" for "must".

The 2019 amendment deleted "and regulations" following "rules" in (1).

12-9-403. Appointment and training.

(a) A person shall not be appointed as a police traffic radar operator or police traffic radar instructor until the minimum standards for training requirements have been completed.

(b) The training requirements for police traffic radar operators or police traffic radar instructors shall be established by the Arkansas Commission on Law Enforcement Standards and Training.

(c) The commission shall issue a certificate evidencing a law enforcement officer's certification to operate a police traffic radar after evidence is submitted by the law enforcement agency director, chief, or county

sheriff that the police traffic radar operator has met the training requirements.

(d) This section does not preclude any law enforcement agency from establishing qualifications and standards for appointing and training of police traffic radar operators and police traffic radar instructors that exceed those set by this subchapter or by the commission.

(e) A police traffic radar operator or police traffic radar instructor failing to meet the training requirements as set forth in this subchapter shall lose his or her authority to operate a police traffic radar for enforcement purposes.

(f) A law enforcement officer shall complete the commission-required training for law enforcement officer certification before being eligible for certification as a police traffic radar operator.

(g) Only a full-time law enforcement officer, part-time law enforcement officer, or an auxiliary law enforcement officer appointed as a reserve law enforcement officer as defined by commission rule is eligible for certification as a police traffic radar operator.

History. Acts 1983, No. 672, § 4; A.S.A. 1947, § 42-1013; Acts 1997, No. 734, § 1; 2005, No. 1962, § 28; 2011, No. 1240, § 3; 2019, No. 151, § 7.

Amendments. The 2019 amendment in (c), substituted “shall” for “may” and “a law enforcement officer’s certification to operate a police traffic radar after” for “satisfactory completion of the require-

ments of this subchapter when”; substituted “This section does not” for “Nothing in this section shall be construed to” in (d); inserted the second occurrence of “law enforcement” in (f); substituted “part-time law enforcement officer” for “part-time I law enforcement officer, part-time II law enforcement officer” in (g); and made stylistic changes.

SUBCHAPTER 6 — LAW ENFORCEMENT OFFICER EMPLOYMENT, APPOINTMENT, OR SEPARATION

SECTION.

12-9-602. Notice of employment, appointment, or separation — Response by the law enforce-

SECTION.

ment officer — Duty of division.
12-9-603. Certification review.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-9-602. Notice of employment, appointment, or separation — Response by the law enforcement officer — Duty of division.

(a)(1) An employing agency shall immediately notify the Division of Law Enforcement Standards and Training, in a manner adopted by the division, of the employment or appointment, or separation from employment or appointment, of any law enforcement officer.

(2) Separation from employment or appointment includes any firing, termination, resignation, retirement, or voluntary or involuntary extended leave of absence of any law enforcement officer.

(3) A submission to the division related to the employment or appointment, or separation from employment or appointment, of a law enforcement officer is subject to the provisions of § 5-53-103 concerning false swearing.

(b)(1) In a case of separation from employment or appointment, the employing agency shall notify the division in a manner adopted by the division, setting forth in detail the facts and reasons for the separation.

(2) In a case of a separation from employment or appointment for one (1) of the following reasons, the notice shall state that:

(A) The law enforcement officer was separated for his or her failure to meet the minimum qualifications for employment or appointment as a law enforcement officer;

(B) The law enforcement officer was dismissed for a violation of state or federal law;

(C) The law enforcement officer was dismissed for a violation of the regulations of the law enforcement agency; or

(D) The law enforcement officer resigned while he or she was the subject of a pending internal investigation.

(3) Any law enforcement officer who has separated from employment or appointment shall be permitted to respond to the separation, in writing, to the division, setting forth the facts and reasons for the separation as he or she understands them.

(c)(1) Before employing or appointing a law enforcement officer, a subsequent employing agency shall contact the division to inquire as to the facts and reasons a law enforcement officer became separated from any previous employing agency.

(2) The division shall provide subsequent employing agencies with all information in the division's possession resulting from the requirements of subsection (b) of this section.

(d)(1) An administrator of an employing agency who discloses information under this section is immune from civil liability for such disclosure or its consequences.

(2) An employing agency is not civilly liable for disclosure of information under this subchapter or performing any other duties under this subchapter.

(e)(1) The division and its employees who disclose information under this section are immune from civil liability for such disclosure or its consequences.

- (2) The division and its employees are not civilly liable for:
- (A) Disclosure of information under this subchapter; or
 - (B) Performing any other duties under this subchapter.

History. Acts 1997, No. 949, § 1; 1999, No. 949, § 1; 2019, No. 151, § 8; 2019, No. 910, §§ 5828-5832.

A.C.R.C. Notes. Acts 2019, No. 151, § 8, used “commission” when adding the new language of present subdivisions (a)(3), (b)(1), and (c)(2) of this section. However, pursuant to the amendments made to this section by Acts 2019, No. 910, §§ 5828-5832, and pursuant to the authority of § 25-43-109 and Acts 2019, No. 910, § 6343, the Arkansas Code Revision Commission has changed “commission” to “division” in these subdivisions.

Acts 2019, No. 910, § 5828, changed “commission” to “division” in former subdivision (a)(1)(B) of this section. However, Acts 2019, No. 151, § 8, specifically repealed this subdivision.

Acts 2019, No. 910, § 5829, changed “commission” to “division” in the phrase “execute and maintain an affidavit-of-separation form adopted by the commission” in former subdivision (b)(1)(A) of this section. However, Acts 2019, No. 151, § 8, specifically repealed this phrase.

Acts 2019, No. 910, § 5829, changed

“commission” to “division” in former subdivision (b)(1)(B) of this section. However, Acts 2019, No. 151, § 8, specifically repealed this subdivision.

Amendments. The 2019 amendment by No. 151 deleted (a)(1)(B) and redesignated former (a)(1)(A) as (a)(1); substituted “in a manner” for “in writing, or on a form” in (a)(1); added (a)(3); deleted (b)(1)(B) and (b)(1)(C) and redesignated former (b)(1)(A) as (b)(1); substituted “notify the commission in a manner” for “execute and maintain an affidavit-of-separation form” in (b)(1); substituted “shall” for “must” in (b)(3) and (c)(1); rewrote (c)(2); substituted “are not” for “shall not be” in the introductory language of (e)(2); and made stylistic changes.

The 2019 amendment by No. 910 substituted “division” for “commission” and made similar changes throughout the section; and substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training” in (a)(1)(A).

12-9-603. Certification review.

When an employing agency reports that a law enforcement officer was separated from employment or appointment for one (1) or more of the reasons specified in § 12-9-602(b)(2), the Arkansas Commission on Law Enforcement Standards and Training shall review the certification of the law enforcement officer, the law enforcement officer’s eligibility for certification, and the law enforcement officer’s ability to act as a law enforcement officer, to determine whether to suspend or revoke the law enforcement officer’s:

- (1) Certification;
- (2) Eligibility for certification; or
- (3) Ability to act as a law enforcement officer.

History. Acts 1997, No. 949, § 1; 2019, No. 151, § 9.

Amendments. The 2019 amendment rewrote the section.

CHAPTER 10
COMMUNICATIONS SYSTEMS

SUBCHAPTER.

- 2. STATEWIDE RADIO COMMUNICATIONS SYSTEM.
- 3. ARKANSAS PUBLIC SAFETY COMMUNICATIONS AND NEXT GENERATION 911 ACT OF 2019.

SUBCHAPTER 2 — STATEWIDE RADIO COMMUNICATIONS SYSTEM

SECTION.

12-10-203. Policy committee.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-10-203. Policy committee.

(a) A seven-member policy committee composed of two (2) representatives each from the Arkansas Sheriffs’ Association, the Arkansas Association of Chiefs of Police, and the Arkansas Law Enforcement Officers Association and one (1) representative from the Division of Arkansas State Police will be responsible for policy making and for policing a statewide communication system.

(b) Members of the policy committee will be appointed by the presidents of the respective law enforcement associations and the Director of the Division of Arkansas State Police.

History. Acts 1979, No. 520, § 6; A.S.A. 1947, § 42-1106; Acts 2019, No. 910, § 5833.

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a) and (b).

Amendments. The 2019 amendment

SUBCHAPTER 3 — ARKANSAS PUBLIC SAFETY COMMUNICATIONS AND NEXT
GENERATION 911 ACT OF 2019

SECTION.

12-10-301. Title.

12-10-302. Legislative findings, policy, and purpose.

SECTION.

12-10-303. Definitions.

12-10-304. Public safety answering points.

SECTION.

- 12-10-305. Arkansas 911 Board.
- 12-10-306. Communications personnel.
- 12-10-307. [Repealed.]
- 12-10-308. Response to requests for emergency response inside and outside jurisdiction.
- 12-10-309. Requests from the hearing and speech impaired.
- 12-10-310. Records of calls.
- 12-10-311, 12-10-312. [Repealed.]
- 12-10-313. Restrictions and nonemergency telephone number.
- 12-10-314. Connection of network to automatic alarms, etc., prohibited.
- 12-10-315. [Repealed.]
- 12-10-316. Public safety answering points — Access to information.
- 12-10-317. Public safety answering point — Operation — Rights,

SECTION.

- duties, liabilities, etc., of service providers.
- 12-10-318. Emergency telephone service charges — Imposition — Liability — Public safety charge.
- 12-10-319, 12-10-320. [Repealed.]
- 12-10-321. Public safety answering points — Bonds.
- 12-10-322. Direct access to 911 services required for multiline telephone systems.
- 12-10-323. Authorized expenditures of revenues.
- 12-10-325. Training standards.
- 12-10-326. Prepaid wireless public safety charge — Definitions.
- 12-10-327. Restriction on creation of public safety answering point.
- 12-10-328. 911 addressing authority — Data maintenance.

A.C.R.C. Notes. Acts 2019, No. 660, § 1, provided: "Title. This act shall be known and may be cited as the 'Public Safety Act of 2019'".

Acts 2019, No. 660, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The State of Arkansas recognizes that maintaining the public's safety is a sacred trust of the government;

"(2) The citizens of Arkansas depend on state government to provide for public welfare and safety; and

"(3) To ensure public welfare and safety, it is important and worthy to achieve the following public safety priorities:

"(A) Developing a next generation 911 system;

"(B) Replacing the Arkansas Emergency Telephone Services Board with the Arkansas 911 Board; and

"(C) Providing upgrades and maintenance funding for the Arkansas Wireless Information Network.

"(b) It is the intent of the General Assembly to simplify and update charges paid by telecommunication subscribers to provide the best public safety communications and services possible to all Arkansas and first responders by:

"(1) Developing a next generation 911 system;

"(2) Replacing the Arkansas Emergency Telephone Services Board with the Arkansas 911 Board; and

"(3) Providing upgrades and maintenance funding for the Arkansas Wireless Information Network".

Effective Dates. Acts 2017, No. 574, § 2: July 1, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there are currently more than one hundred twenty (120) public safety answering points in the state; that many of these public safety answering points are in close proximity to others, creating a duplication of services and errors in 911 service; and that this act is necessary to save taxpayer money and create more efficient government services. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2017."

Acts 2019, No. 660, § 11: Oct. 1, 2019. Effective date clause provided: "Sections 4 and 8 of this act are effective on and after October 1, 2019".

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new de-

partments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should

become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-10-301. Title.

This subchapter shall be known and may be cited as the "Arkansas Public Safety Communications and Next Generation 911 Act of 2019".

History. Acts 1985, No. 683, § 1; A.S.A. 1947, § 73-1822; Acts 2019, No. 660, § 3.

inserted "shall be known and" and "and Next Generation 911" and substituted "2019" for "1985".

Amendments. The 2019 amendment

12-10-302. Legislative findings, policy, and purpose.

(a) It has been determined to be in the public interest to shorten the time and simplify the method required for a citizen to request and receive emergency aid.

(b) The provision of a single, primary three-digit emergency number through which fire suppression, rescue, disaster and major emergency, emergency medical, and law enforcement services may be quickly and efficiently obtained will provide a significant contribution to response by simplifying notification of these emergency service responders. A simplified means of procuring these emergency services will result in saving of life, a reduction in the destruction of property, quicker apprehension of criminals, and ultimately the saving of moneys.

(c) Establishment of a uniform emergency telephone number is a matter of concern to all citizens.

(d) The emergency number 911 has been made available at the national level for implementation throughout the United States and Canada.

(e) It is found and declared necessary to:

(1) Establish the National Emergency Number 911 (nine, one, one) as the primary emergency telephone number for use in participating political subdivisions of the State of Arkansas;

(2) Authorize each chief executive to direct establishment and operation of public safety answering points in their political subdivisions and to designate the location of a public safety answering point and agency which is to operate the center. As both are elected positions, a county judge must obtain concurrence of the county sheriff;

(3) Encourage the political subdivisions to implement public safety answering points; and

(4) Provide a method of funding for the political subdivisions, subject to the jurisdiction of the Arkansas 911 Board, which will allow them to implement, operate, and maintain a public safety answering point.

History. Acts 1985, No. 683, § 2; A.S.A. 1947, § 73-1823; Acts 2019, No. 660, § 3.

Amendments. The 2019 amendment substituted “public safety answering points” for “911 public safety communications center” in (e)(2) and (e)(3); substi-

tuted “public safety answering point” for “911 public safety communications center” in (e)(2); and, in (e)(4), inserted “subject to the jurisdiction of the Arkansas 911 Board” and substituted “answering point” for “communications center”.

12-10-303. Definitions.

As used in this subchapter:

(1) “Access line” means a communications line or device that has the capacity to access the public switched network;

(2) “Automatic location identification” means an enhanced 911 service capability that enables the automatic display of information defining the geographical location of the telephone used to place the 911 call;

(3) “Automatic number identification” means an enhanced 911 service capability that enables the automatic display of the ten-digit number used to place a 911 call from a wire line, wireless, voice over internet protocol, or any nontraditional phone service;

(4) “Basic 911 system” means a system by which the various emergency functions provided by public safety agencies within each political subdivision may be accessed utilizing the three-digit number 911, but no available options are included in the system;

(5) “Chief executive” means the Governor, county judges, mayors, city managers, or city administrators of incorporated places, and is synonymous with head of government, dependent on the level and form of government;

(6) “CMRS connection” means each account or number assigned to a CMRS customer;

(7)(A) “Commercial mobile radio service” or “CMRS” means commercial mobile service under §§ 3(33) and 332(d), Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993.

(B) “Commercial mobile radio service” or “CMRS” includes any wireless or two-way communication device that has the capability of connecting to a public safety answering point;

(8) “Dispatch center” means a public or private agency that dispatches public or private safety agencies but does not operate a public safety answering point;

(9) “Enhanced 911 network features” means those features of selective routing that have the capability of automatic number and location identification;

(10)(A) “Enhanced 911 system” means enhanced 911 service, which is a telephone exchange communications service consisting of tele-

phone network features and public safety answering points designated by the chief executive that enables users of the public telephone system to access a public safety answering point by dialing the digits "911".

(B) The enhanced 911 system directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification;

(11)(A) "ESINet" means a managed internet protocol network that is used for emergency services communications that can be shared by all public safety agencies and that provides the internet protocol transport infrastructure upon which independent application platforms and core services can be deployed, including without limitation those services necessary for providing next generation 911 services.

(B) "ESINet" is the designation for the network, but not the services on the network;

(12) "Exchange access facilities" means all lines provided by the service supplier for the provision of local exchange service;

(13) "Geographic information system" means a system for capturing, storing, displaying, analyzing, and managing data and associated attributes which are spatially referenced;

(14) "Governing authority" means county quorum courts and governing bodies of municipalities;

(15) "Next generation 911" means a secure, internet protocol-based, open standards system, composed of hardware, software, data, and operation policies and procedures, that:

(A) Provides standardized interfaces from emergency call and message services to support emergency communications;

(B) Processes all types of emergency calls, including voice, text, data, and multimedia information;

(C) Acquires and integrates additional emergency call data useful to call routing and handling;

(D) Delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities based on the location of the caller;

(E) Supports data, video, and other communications needs for coordinated incident response and management; and

(F) Interoperates with services and networks used by first responders to facilitate emergency response;

(16) "Nontraditional phone service" means any service that:

(A) Enables real-time voice communications from the user's location to customer premise equipment;

(B) Permits users to receive calls that originate on the public switched telephone network or to terminate calls to the public switched telephone network; and

(C) Has the capability of placing a 911 call;

(17) "Nontraditional phone service connection" means each account or number assigned to a nontraditional phone service customer;

(18)(A) "Operating agency" means the public safety agency authorized and designated by the chief executive of the political subdivision to operate a public safety answering point.

(B) Operating agencies are limited to offices of emergency services, fire departments, and law enforcement agencies of the political subdivisions;

(19) "Prepaid wireless telecommunications service" means a prepaid wireless calling service as defined in § 26-52-314;

(20) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or emergency medical services;

(21) "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides firefighting, rescue, natural, or human-caused disaster or major emergency response, law enforcement, and ambulance or emergency medical services;

(22) "Public safety answering point" means the location at which all 911 communications are initially answered that is operated on a twenty-four-hour basis by an operating agency and dispatches two (2) or more public safety agencies;

(23) "Public safety officers" means specified personnel of public safety agencies;

(24) "Readiness costs" means equipment and payroll costs associated with equipment, call takers, and dispatchers on standby waiting for 911 calls;

(25) "Selective routing" means the method employed to direct 911 calls to the appropriate public safety answering point based on the geographical location from which the call originated;

(26) "Service supplier" means any person, company, or corporation, public or private, providing exchange telephone service, nontraditional phone service, voice over internet protocol service, or CMRS service throughout the political subdivision;

(27) "Service user" means any person, company, corporation, business, association, or party not exempt from county or municipal taxes or utility franchise assessments that is provided landline telephone service, CMRS service, voice over internet protocol service, or any nontraditional phone service with the capability of placing a 911 call in the political subdivision;

(28) "Short message service" means a service typically provided by mobile carriers that sends short messages to an endpoint;

(29)(A) "Tariff rate" means the rate or rates billed by a service supplier as stated in the service supplier's tariffs, price lists, customer contracts, or other methods of publishing service offerings that represent the service supplier's recurring charges for exchange access facilities, exclusive of all:

- (i) Taxes;
- (ii) Fees;
- (iii) Licenses; or

(iv) Similar charges whatsoever.

(B) The tariff rate per county may include extended service area charges only if an emergency telephone service charge has been levied in a county and a resolution of intent has been passed by a county's quorum court that defines tariff rate as being inclusive of extended service area charges;

(30) "Telecommunicator" means a person employed by a public safety answering point or an emergency medical dispatcher service provider, or both, who is qualified to answer incoming emergency telephone calls or provide for the appropriate emergency response, or both, either directly or through communication with the appropriate public safety answering point;

(31) "Voice over internet protocol connection" means each account or number assigned to a voice over internet protocol customer;

(32) "Voice over internet protocol service" means any service that:

(A) Enables real-time voice communications;

(B) Requires a broadband connection from the user's location;

(C) Requires internet protocol compatible customer premise equipment;

(D) Permits users to receive calls that originate on the public switched telephone network or to terminate calls to the public switched telephone network; and

(E) Has the capability of placing a 911 call; and

(33) "Wireless telecommunications service provider" means a provider of commercial mobile radio services:

(A) As defined in 47 U.S.C. § 332(b), as it existed on January 1, 2006, including all broadband personal communications services, wireless radio telephone services, geographic-area-specialized and enhanced-specialized mobile radio services, and incumbent, wide area, specialized mobile radio licensees that offer real-time, two-way voice service interconnected with the public switched telephone network; and

(B) That either:

(i) Is doing business in the State of Arkansas; or

(ii) May connect with a public safety answering point.

History. Acts 1985, No. 683, § 3; A.S.A. 1947, § 73-1824; Acts 1997, No. 810, § 1; 2003, No. 668, § 1; 2007, No. 582, § 1; 2009, No. 1221, § 1; 2013, No. 623, §§ 1, 2; 2015, No. 919, § 1; 2019, No. 660, § 3.

Amendments. The 2019 amendment rewrote the section.

U.S. Code. The federal definition of commercial mobile service referred to in subdivision (7)(A) of this section is codified as 47 U.S.C. § 332(d), and the definition of mobile service is codified as 47 U.S.C. § 153(33).

12-10-304. Public safety answering points.

(a)(1) The chief executive of a political subdivision may:

(A) Designate the public safety answering point of another political subdivision to serve his or her political subdivision as a public safety answering point only; or

(B) Retain a dispatch center to serve both public safety answering point and dispatch functions.

(2) A designation under subdivision (a)(1) of this section shall be in the form of a written mutual aid agreement between the political subdivisions, with approval from the Arkansas 911 Board, and shall include that a fair share of funding shall be contributed by the political subdivision being served to the political subdivision operating the public safety answering point.

(3) Moneys necessary for the fair share of funding may be generated:

(A) As authorized in this subchapter;

(B) By funds received by or allocated by the Arkansas 911 Board; and

(C) By any other funds available to the political subdivision unless the use of the funds for 911 services is prohibited by law.

(4) If a designation under subdivision (a)(1) of this section and a mutual aid agreement are made, an additional public safety answering point shall not be created without termination of the mutual aid agreement.

(b) A public safety answering point established under this subchapter may serve the jurisdiction of more than one (1) public agency of the political subdivision or, through mutual aid agreements, more than one (1) political subdivision.

(c) This subchapter does not prohibit or discourage in any manner the formation of multiagency or multijurisdictional public safety answering points.

(d) The chief executive of a political subdivision may contract with a private entity to operate a public safety answering point under rules established by the Arkansas 911 Board.

History. Acts 1985, No. 683, §§ 2, 4, 7; A.S.A. 1947, §§ 73-1823, 73-1825, 73-1828; Acts 2019, No. 660, § 3.

substituted "Public safety answering points" for "911 communication centers — Creation" in the section heading, and rewrote the section.

Amendments. The 2019 amendment

12-10-305. Arkansas 911 Board.

(a)(1) There is created the Arkansas 911 Board to consist of the following members:

(A) The Director of the Division of Emergency Management or his or her designee;

(B) The Auditor of State or his or her designee;

(C) The State Geographic Information Officer of the Arkansas Geographic Information Systems Office or his or her designee;

(D) One (1) county judge appointed by the Association of Arkansas Counties;

(E) One (1) mayor appointed by the Arkansas Municipal League;

(F) One (1) 911 coordinator, director, or telecommunicator appointed by the Speaker of the House of Representatives;

(G) One (1) 911 coordinator, director, or telecommunicator appointed by the President Pro Tempore of the Senate;

(H) One (1) police chief appointed by the Arkansas Association of Chiefs of Police; and

(I) The following members to be appointed by the Governor:

(i) One (1) Emergency Management Director of a political subdivision;

(ii) One (1) sheriff;

(iii) One (1) representative of emergency medical services; and

(iv) One (1) fire chief.

(2)(A) The members under subdivisions (a)(1)(G), (a)(1)(I)(i), (a)(1)(I)(iii), and (a)(1)(I)(iv) of this section shall serve a term of two (2) years.

(B) The members under subdivisions (a)(1)(D), (a)(1)(E), (a)(1)(F), (a)(1)(H), and (a)(1)(I)(ii) of this section shall serve a term of four (4) years.

(3) Vacancies shall be filled in the same manner as the original appointment and each member shall serve until a qualified successor is appointed.

(4) The Director of the Division of Emergency Management shall serve as the chair and call the first meeting no later than thirty (30) days after the appointment of the majority of the members of the Arkansas 911 Board.

(5) The Arkansas 911 Board shall establish bylaws.

(b) The duties of the Arkansas 911 Board shall include without limitation:

(1)(A) Developing a plan no later than January 1, 2022, to provide funding for no more than seventy-seven (77) public safety answering points to operate in the state.

(B) If the Arkansas 911 Board determines it is necessary, the Arkansas 911 Board may provide funding for more or fewer than seventy-seven (77) public safety answering points with a two-thirds ($\frac{2}{3}$) vote of the Arkansas 911 Board;

(2) Within one (1) year of July 24, 2019, promulgating rules necessary to:

(A) Establish guidelines for Arkansas public safety answering points in accordance with the Association of Public-Safety Communications Officials International, Inc. and the National Emergency Number Association;

(B) Create standards for public safety answering point interoperability between counties and states; and

(C) Assist all public safety answering points in implementing a next generation 911 system in the State of Arkansas;

(3) Receiving and reviewing all 911 certifications submitted by public safety answering points in accordance with standards developed by the Arkansas 911 Board;

(4) Auditing any money expended by a political subdivision for the operation of a service supplier;

(5)(A) Providing an annual report to the Governor and the Legislative Council.

(B) The report shall include a review and assessment of sustainability and the feasibility of further reduction of the required number of public safety answering points resulting from the standardization of operational processes and training and the implementation of next generation 911 service;

(6) Establishing and maintaining an interest-bearing account into which shall be deposited revenues transferred to the Arkansas 911 Board from the Arkansas Public Safety Trust Fund and the Arkansas Emergency Telephone Services Board; and

(7) Managing and disbursing the funds from the interest-bearing account described in subdivision (b)(6) of this section.

(c) The Arkansas 911 Board shall have all powers necessary to fulfill the duties of the Arkansas 911 Board, including without limitation power to enter, assign, and assume contracts.

(d) The Arkansas 911 Board shall disburse from the interest-bearing account described in subdivision (b)(6) of this section in the following manner:

(1)(A) Not less than eighty-three and seventy-five hundredths percent (83.75%) of the total monthly revenues shall be distributed on a population basis to each political subdivision operating a public safety answering point that has the capability of receiving 911 calls on dedicated 911 trunk lines for expenses incurred for answering, routing, and proper disposition of 911 calls, including payroll costs, readiness costs, and training costs associated with wireless, voice over internet protocol, and nontraditional 911 calls.

(B) In determining the population basis for distribution of funds, the Arkansas 911 Board shall determine, based on the latest federal decennial census, the population of:

(i) All unincorporated areas of counties operating a public safety answering point that has the capacity to receive commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines; and

(ii) All incorporated areas of counties operating a public safety answering point that has the capacity to receive commercial mobile radio service, voice over protocol service, or nontraditional 911 calls on dedicated 911 trunk lines;

(2)(A) Not more than fifteen percent (15%) of the total monthly revenues may be used:

(i) To purchase a statewide infrastructure for next generation 911, including without limitation ESINet, connectivity costs, and next generation 911 components and equipment; and

(ii) By public safety answering points for upgrading, purchasing, programming, installing, and maintaining necessary data, basic 911 geographic information system mapping, hardware, and software, including any network elements required to supply enhanced 911 phase II cellular, voice over internet protocol, and other nontraditional telephone services, in connection with compliance with Federal Communications Commission requirements.

(B)(i) A political subdivision operating a public safety answering point shall present invoices to the Arkansas 911 Board in connection with any request for reimbursement under subdivision (d)(2)(A)(ii) of this section.

(ii) A request for reimbursement shall be approved by a majority vote of the Arkansas 911 Board.

(C) Any invoices presented to the Arkansas 911 Board for reimbursements of costs not described by subdivision (d)(2)(B)(ii) of this section may be approved only by a majority vote of the Arkansas 911 Board;

(3) Not more than one and twenty-five hundredths (1.25%) of the monthly revenues may be used by the Arkansas 911 Board to compensate the independent auditor and for administrative expenses, staff, and consulting services; and

(4) All interest received shall be disbursed as prescribed in this subsection.

(e) The Arkansas 911 Board may:

(1) Withhold for no less than six (6) months any additional revenue generated by the public safety charge and the prepaid public safety charge under this subchapter; and

(2) Calculate a monthly payment amount based on the prior calendar year certifications and remit that amount to the eligible governing body on a monthly basis.

(f)(1) All cities and counties operating a public safety answering point shall submit to the Arkansas 911 Board no later than April 1 of each calendar year the following information in the form of a report:

(A) An explanation and accounting of the funds received by the city or county and expenditures of the funds received for the previous calendar year, along with a copy of the budget for the previous calendar year and a copy of the year-end appropriation and expenditure analysis of any participating or supporting counties, cities, or agencies;

(B) Any information requested by the Arkansas 911 Board concerning local public safety answering point operations, facilities, equipment, personnel, network, interoperability, call volume, telecommunicator training, and supervisor training;

(C) A copy of all documents reflecting 911 funds received for the previous calendar year, including without limitation wireless, wireline, general revenues, sales taxes, and other sources used by the city or county for 911 services; and

(D) The name of each telecommunicator, the telecommunicator's date of hire, the telecommunicator's date of termination, if applicable, and approved courses by the Arkansas Commission on Law Enforcement Standards and Training completed by the telecommunicator, including without limitation "train the trainer" courses.

(2) The chief executive for each public safety answering point shall gather the information necessary for the report under subdivision (f)(1) of this section and provide the report and a copy of the certification of

the public safety answering point to the Arkansas 911 Board and to the county intergovernmental coordination council for use in conducting the annual review of services under § 14-27-104.

(g) The Arkansas 911 Board may withhold all or part of the disbursement to a public safety answering point if the report of an auditor or the Arkansas 911 Board otherwise confirms that the public safety answering point improperly used funds disbursed by the Arkansas 911 Board for purposes other than those authorized by § 12-10-323.

(h)(1) Each county shall complete locatable address conversion of 911 physical address, assignment, and mapping within the county and certify to the Arkansas 911 Board that the locatable address conversion is completed no later than the last business day of February 2020.

(2) Failure to comply with this section may result in the Arkansas 911 Board's withholding funds from the public safety answering point.

(i) The Arkansas 911 Board may contract for 911 services in the implementation of the next generation 911.

(j)(1) The Director of the Division of Emergency Management may:

(A) Enter, assign, assume, and execute contract extensions that would otherwise lapse during the transition period between the Arkansas Emergency Telephone Services Board and the Arkansas 911 Board; and

(B) Work with the Arkansas Emergency Telephone Services Board to ensure a smooth transition between the Arkansas Emergency Telephone Services Board and the Arkansas 911 Board.

(2) The Arkansas Emergency Telephone Services Board shall continue to receive and disburse funds and continue operations up to the last business day of December 2019.

(3) All emergency telephone service charges collected but not yet disbursed, other moneys, and any remaining balance in the interest-bearing account of the Arkansas Emergency Telephone Services Board shall be transferred to the Arkansas 911 Board by the last business day of December 2019.

History. Acts 2019, No. 660, § 3.

305 is now codified as amended as § 12-

Publisher's Notes. Former § 12-10- 10-304(a)-(c).

12-10-306. Communications personnel.

The staff and supervisors of a public safety answering point or dispatch center shall be:

(1)(A) Paid employees, either sworn officers or civilians, of the operating agency designated by the chief executive of the political subdivisions.

(B) Personnel other than law enforcement or fire officers shall be considered public safety officers for the purposes of public safety communications or engaging by contract with the operating agency;

(2) Required to submit to criminal background checks for security clearances before accessing files available through the Arkansas Crime Information Center if the public safety answering point or dispatch

center is charged with information service functions for criminal justice agencies of the political subdivision;

(3) Trained in operation of 911 system equipment and other training as necessary to operate a public safety answering point or dispatch center, or both;

(4) Subject to the authority of the affiliated agency and the chief executive of the political subdivision through the public safety answering point or dispatch center; and

(5)(A) Required to immediately release without the consent or approval of any supervisor or other entity any information in their custody or control to a prosecuting attorney if requested by a subpoena issued by a prosecutor, grand jury, or any court for use in the prosecution or the investigation of any criminal or suspected criminal activity.

(B) The staff or supervisor of a public safety answering point or dispatch center, or both, an operating agency, and the service supplier are not liable in any civil action as a result of complying with a subpoena as required in subdivision (5)(A) of this section.

History. Acts 1985, No. 683, § 8; A.S.A. 1947, § 73-1829; Acts 2007, No. 651, § 1; 2009, No. 165, § 1; 2019, No. 660, § 3.

A.C.R.C. Notes. The repeal set out under § 12-10-306 in Acts 2019, No. 660, § 3, has been codified at § 12-10-307 to better reflect the provisions deleted and

retained by Acts 2019, No. 660.

Amendments. The 2019 amendment substituted “Communications personnel” for “Public safety communications personnel” in the section heading, and rewrote the section.

12-10-307. [Repealed.]

A.C.R.C. Notes. The repeal set out under § 12-10-306 in Acts 2019, No. 660, § 3, has been codified at § 12-10-307 to better reflect the provisions deleted and retained by Acts 2019, No. 660.

Publisher’s Notes. This section, con-

cerning transmission of requests, was repealed by Acts 2019, No. 660, § 3, effective July 24, 2019. The section was derived from Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828. For current law, see § 12-10-308(a).

12-10-308. Response to requests for emergency response inside and outside jurisdiction.

(a) A public safety answering point shall be capable of transmitting requests for law enforcement, firefighting, disaster, or major emergency response, emergency medical or ambulance services, or other emergency services to a public or private agency where the services are available to the political subdivision in the public safety answering point’s jurisdiction.

(b) A public safety answering point or dispatch center, or both, which receives a request for emergency response outside its jurisdiction shall promptly forward the request to the public safety answering point or public safety agency responsible for that geographical area.

(c) Any emergency unit dispatched to a location outside its jurisdiction in response to such a request shall render service to the requesting

party until relieved by the public safety agency responsible for that geographical area.

(d) Political subdivisions may enter into mutual aid agreements to carry out the provisions of this section.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828; Acts 2019, No. 660, § 3.

Amendments. The 2019 amendment added (a) and redesignated the remaining subsections accordingly; and substituted “public safety answering point or dispatch center, or both” for “911 public safety communications center” in (b).

12-10-309. Requests from the hearing and speech impaired.

Each public safety answering point or dispatch center shall be equipped with a system for the processing of requests from the hearing and speech impaired for emergency response.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828; Acts 2019, No. 660, § 3.

Amendments. The 2019 amendment substituted “public safety answering point or dispatch center” for “911 public safety communications center”.

12-10-310. Records of calls.

(a) The public safety answering point shall develop and maintain a system for recording 911 calls received at the public safety answering point.

(b) A dispatch center shall develop and maintain a system that has been approved by the Arkansas 911 Board for recording 911 calls transferred from a public safety answering point.

(c) All information contained with or attached to a 911 call, including without limitation short message service, text, video, and photographs, shall be retained.

(d) The records shall be retained for a period of at least one hundred eighty (180) days from the date of the call and shall include the following information:

- (1) Date and time the call was received;
- (2) The nature of the problem; and
- (3) Action taken by the telecommunicators.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828; Acts 2019, No. 660, § 3.

Amendments. The 2019 amendment in (a), substituted “public safety answering point” for “911 public safety communications center” and deleted the second sentence; inserted (b) and (c); redesignated former (b) as (d); substituted “one hundred eighty (180) days” for “thirty one (31) days” in the introductory language of (d); and substituted “telecommunicators” for “911 public safety communications center personnel” in (d)(3).

12-10-311, 12-10-312. [Repealed.]

Publisher’s Notes. These sections, concerning methods of response and restricted use of 911, were repealed by Acts 2019, No. 660, § 3, effective July 24, 2019. The sections were derived from:

12-10-311. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828.

12-10-312. Acts 1985, No. 683, § 9; A.S.A. 1947, § 73-1830; Acts 2005, No. 1962, § 31.

For current law comparable to former
§ 12-10-312, see § 12-10-313(a).

12-10-313. Restrictions and nonemergency telephone number.

(a) The telephone number 911 is restricted to emergency calls that may result in dispatch of the appropriate response service for fire suppression and rescue, emergency medical services or ambulance, hazardous material incidents, disaster or major emergency occurrences, and law enforcement activities.

(b) Any person calling the telephone number 911 for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency dispatch of any public safety agency upon conviction is guilty of a Class A misdemeanor.

(c) Each public safety answering point and dispatch center will maintain a published nonemergency telephone number, and nonemergency calls should be received on that number.

(d) Transfers of calls from 911 trunks to nonemergency numbers are discouraged because that ties up 911 trunks and may interfere with true emergency calls.

History. Acts 1985, No. 683, § 9; A.S.A. 1947, § 73-1830; Acts 2019, No. 660, § 3.

Amendments. The 2019 amendment added "Restrictions and" in the section heading; added (a) and (b); redesignated

former (a) and (b) as (c) and (d); substituted "public safety answering point and dispatch center" for "911 public safety communications center" in (c); and deleted former (c).

12-10-314. Connection of network to automatic alarms, etc., prohibited.

No person shall connect to a service supplier's network any automatic alarm or other automatic alerting devices which cause the number 911 to be automatically dialed and provide a prerecorded message in order to directly access the services which may be obtained through a public safety answering point.

History. Acts 1985, No. 683, § 9; A.S.A. 1947, § 73-1830; Acts 2019, No. 660, § 3.

Amendments. The 2019 amendment

substituted "public safety answering point" for "911 public safety communications center".

12-10-315. [Repealed.]

Publisher's Notes. This section, concerning the penalty for a false alarm, complaint, or information, was repealed by Acts 2019, No. 660, § 3, effective July

24, 2019. The section was derived from Acts 1985, No. 683, § 10; A.S.A. 1947, § 73-1831. For current law, see § 12-10-313(b).

12-10-316. Public safety answering points — Access to information.

(a) A public safety answering point and dispatch center designated by the chief executive of the political subdivision may be considered an

element in the communications network connecting state, county, and local authorities to a centralized state depository of information in order to serve the public safety and criminal justice community.

(b) A public safety answering point and dispatch center is restricted in that it may access files in the centralized state depository of information only for the purpose of providing information to:

(1) An end user as authorized by state law; and

(2) An authorized recipient of the contents of those files, in the absence of serving as an information service agency.

(c) The designation of the public safety answering point as an information provider to an authorized recipient and an agency of a political subdivision shall be made by the chief executive of each political subdivision.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828; Acts 2005, No. 1962, § 32; 2019, No. 660, § 3.

Amendments. The 2019 amendment substituted “Public safety answering points” for “911 centers” in the section heading; substituted “public safety answering point and dispatch center” for

“911 public safety communications center” in (a) and in the introductory language of (b); redesignated (b)(1) as (b); redesignated (b)(1)(A) and (b)(1)(B) as (b)(1) and (b)(2), respectively; deleted former (b)(2); and inserted “of the public safety answering point” in (c).

12-10-317. Public safety answering point — Operation — Rights, duties, liabilities, etc., of service providers.

(a)(1) Each service provider shall forward to any public safety answering point equipped for enhanced 911 service the telephone number and street address of any telephone used to place a 911 call.

(2) Subscriber information provided in accordance with this subsection shall be used only for the purpose of responding to requests for emergency service response from public or private safety agencies, for the investigation of false or intentionally misleading reports of incidents requiring emergency service response, or for other lawful purposes.

(3) A service provider, agents of a service provider, political subdivision, or officials or employees of a political subdivision are not liable to any person who uses the enhanced 911 service established under this subchapter for release of the information specified in this section or for failure of equipment or procedure in connection with enhanced 911 service or basic 911 service.

(b)(1) The public safety answering point and dispatch center shall be notified in advance by an authorized service provider representative of any routine maintenance work to be performed that may affect the 911 system’s reliability or capacity.

(2) The work shall be performed during the public safety answering point’s off-peak hours.

History. Acts 1985, No. 683, § 7; A.S.A. 1947, § 73-1828; Acts 2019, No. 660, § 3.

Amendments. The 2019 amendment substituted “Public safety answering

point" for "911 center" in the section heading; inserted the first occurrence of "response" in (a)(2); in (a)(3), substituted "A service" for "No service" and substituted "are not liable" for "shall be liable"; redesignated (b) as (b)(1) and (b)(2); in (b)(1),

substituted "public safety answering point and dispatch center" for "911 public safety communications center", and "system's" for "system"; substituted "point's" for "point" in (b)(2); and made stylistic changes.

12-10-318. Emergency telephone service charges — Imposition — Liability — Public safety charge.

(a)(1)(A) When so authorized by a majority of the persons voting within the political subdivision in accordance with the law, the governing authority of each political subdivision may levy an emergency telephone service charge in the amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or the amount up to five percent (5%) of the tariff rate, except that any political subdivision with a population of less than twenty-seven thousand five hundred (27,500) according to the 1990 Federal Decennial Census may, by a majority vote of the electors voting on the issue, levy an emergency telephone charge in an amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or an amount up to twelve percent (12%) of the tariff rate.

(B) The governing authority of a political subdivision that has been authorized under subdivision (a)(1)(A) of this section to levy an emergency telephone service charge in an amount up to twelve percent (12%) of the tariff rate may decrease the percentage rate to not less than four percent (4%) of the tariff rate for those telephone service users that are served by a telephone company with fewer than two hundred (200) access lines in this state as of the date of the election conducted under subdivision (a)(1)(A) of this section.

(2) Upon its own initiative, the governing authority of the political subdivision may call such a special election to be held in accordance with § 7-11-201 et seq.

(b)(1)(A) There is levied a commercial mobile radio service public safety charge in an amount of one dollar and thirty cents (\$1.30) per month per commercial mobile radio service connection that has a place of primary use within the State of Arkansas.

(B) There is levied a voice over internet protocol public safety charge in an amount of one dollar and thirty cents (\$1.30) per month per voice over internet protocol connection that has a place of primary use within the State of Arkansas.

(C) There is levied a nontraditional telephone public safety charge in an amount of one dollar and thirty cents (\$1.30) per month per nontraditional service connection that has a place of primary use within the State of Arkansas.

(D) The service charge levied in subdivision (b)(1)(A) of this section and collected by commercial mobile radio service providers that provide mobile telecommunications services as defined by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, as in effect on

January 1, 2001, shall be collected pursuant to the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252.

(2)(A) The service charges collected under subdivisions (b)(1)(A)-(C) of this section shall be remitted to the Arkansas Emergency Telephone Services Board within thirty (30) days after the end of the month in which the fees are collected.

(B)(i) After September 30, 2019, the public safety charge collected under subdivisions (b)(1)(A)-(C) of this section shall be remitted to the Arkansas Public Safety Trust Fund.

(ii) Due to the confidential and proprietary nature of the information submitted by commercial mobile radio service providers, the information shall be retained by the independent auditor in confidence, shall be subject to review only by the Auditor of State, and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., nor released to any third party.

(iii) The information collected by the independent auditor shall be released only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual commercial mobile radio service provider.

(c) In order to provide additional funding for the public safety answering point, the political subdivision may receive and appropriate any federal, state, county, or municipal funds, as well as funds from a private source, and may expend the funds for the purposes of this subchapter.

(d) The public safety charge shall:

(1) Appear as a single line item on a subscriber's bill;

(2) Not be assessed upon more than two hundred (200):

(A) Exchange access facilities per person per location; or

(B) Voice over internet protocol connections per person per location; and

(3) Not be subject to any state or local tax or franchisee fee.

(e)(1) To verify the accuracy of the monthly remittances that a service supplier makes to the Arkansas Public Safety Trust Fund, a service supplier shall provide copies of required federal filings at least biannually to the Division of Emergency Management.

(2) No later than thirty (30) days following the filing of the required federal telecommunications reports, a service supplier shall provide a copy of the federal filing, and the Federal Communications Commission Form 477 or its equivalent, including the number of access lines used by the service supplier in the state.

(3)(A) Due to the proprietary nature of the information in the reports required in subdivision (e)(1) of this section which, if disclosed, would provide a competitive advantage for other service suppliers, the reports shall be confidential and only subject to review by:

(i) The Director of the Division of Emergency Management; and

(ii) The designee of the Arkansas 911 Board.

(B) However, audit reports may be released that contain only aggregate numbers and do not disclose proprietary information

including numbers or revenue attributable to an individual service supplier.

(f) This section does not prohibit a service supplier from billing, collecting, or retaining an additional amount to reimburse the service supplier for enabling and providing 911, enhanced 911, and next generation 911 services and capabilities in the network and for the facilities and associated equipment.

(g)(1) To avoid an overlap in the assessment of the old and new charges for subscribers for every service supplier obligated to pay the public safety charge, a transition to the payment of the public safety charge shall occur.

(2)(A) The assessment of charges before October 1, 2019, shall continue through September 30, 2019, and be remitted in the same manner to the same entity as previously prescribed under this section before October 1, 2019.

(B) Any unpaid assessments for the time period up to and including September 30, 2019, shall remain due and payable under the terms and processes that are or were in place at the time.

(3) Beginning on October 1, 2019, a service supplier is subject to the public safety charges assessed as described in this section.

(4)(A) After October 1, 2019, a service supplier shall remit all assessments of the public safety charge for a calendar month by the fifteenth business day of the following month to the Arkansas Public Safety Trust Fund.

(B) The Arkansas Public Safety Trust Fund shall provide disbursements as provided by § 19-5-1152.

(h) To provide additional funding for the public safety answering point, the political subdivision may:

(1) Receive and appropriate any federal, state, county, or municipal funds and funds from a private source; and

(2) Expend the funds described in subdivision (h)(1) of this section to operate and maintain a public safety answering point.

(i)(1) Notwithstanding any other provision of the law, in no event shall any commercial mobile radio, voice over internet protocol service, or nontraditional service provider, or its officers, employees, assigns, or agents be liable for civil damages or criminal liability in connection with the development, design, installation, operation, maintenance, performance, or provision of a 911 service.

(2) Nor shall any commercial mobile radio, voice over internet protocol, or nontraditional service provider, its officers, employees, assigns, or agents be liable for civil damages or be criminally liable in connection with the release of subscriber information to any governmental entity as required under the provisions of this subchapter.

History. Acts 1985, No. 683, § 5; A.S.A. 2003, No. 1792, § 1; 2005, No. 1997, § 1; 1947, § 73-1826; Acts 1995, No. 627, § 1; 2005, No. 2145, § 16; 2007, No. 582, § 2; 1997, No. 106, § 1; 1997, No. 810, § 2; 2007, No. 1049, § 33; 2009, No. 1221, § 2; 1997, No. 952, § 1; 1999, No. 46, § 1; 2009, No. 1480, § 48; 2011, No. 640, § 1; 2001, No. 907, § 3; 2003, No. 111, § 1; 2013, No. 623, §§ 3-5; 2013, No. 1170, § 1;

2015, No. 919, § 2; 2019, No. 660, § 4; 2019, No. 910, §§ 5834, 5835.

A.C.R.C. Notes. Acts 2019, No. 910, §§ 5834 and 5835 amended former subdivisions (c)(1)(D) and (c)(2)(B)(i)(b) of this section to replace “Arkansas Department” with “Division” and “Arkansas Commission on” with “Division of”. However, Acts 2019, No. 660, § 4 specifically repealed these subdivisions.

Amendments. The 2019 amendment by No. 660 rewrote the section.

The 2019 amendment by No. 910 substituted “Division of Emergency Management” for “Arkansas Department of Emergency Management” in (c)(1)(D); and substituted “Division of Law Enforcement Standards and Training” for “Arkansas Commission on Law Enforcement Standards and Training” in (c)(2)(B)(i)(b).

Effective Dates. Acts 2019, No. 660, § 11: Oct. 1, 2019. Effective date clause provided: “Sections 4 and 8 of this act are effective on and after October 1, 2019”.

12-10-319, 12-10-320. [Repealed.]

Publisher’s Notes. These sections, concerning reduction and suspension of emergency telephone service charges, and duties, rights, and liability of service supplier in relation to emergency telephone service charges, were repealed by Acts

2019, No. 660, § 5, effective July 24, 2019. The sections were derived from:

12-10-319. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826.

12-10-320. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826.

12-10-321. Public safety answering points — Bonds.

(a) The governing authority of the political subdivision shall have power to incur debt and issue bonds with approval from the Arkansas 911 Board for 911 systems and public safety answering point implementation and future major capital items.

(b) The bonds shall be negotiable instruments and shall be solely the obligations of each political subdivision and not of the State of Arkansas.

(c) The bonds and income thereof shall be exempt from all taxation in the State of Arkansas.

(d) The bonds shall not be general obligations but shall be special obligations payable from all or a specified portion of the income revenues and receipts of the political subdivision and designated by the political subdivision to be dedicated for the local 911 system and public safety answering point.

(e)(1) The bonds shall be authorized and issued by ordinance of the governing authority of each political subdivision.

(2) The bonds shall:

(A) Be of such series as the ordinance provides;

(B) Mature on such date or dates not exceeding thirty (30) years from date of the bonds as the ordinance provides;

(C) Bear interest at such rate or rates as the ordinance provides;

(D) Be in such denominations as the ordinance provides;

(E) Be in such form either coupon or fully registered without coupon as the ordinance provides;

(F) Carry such registration and exchangeability privileges as the ordinance provides;

(G) Be payable in such medium of payment and at such place or places within or without the state as the ordinance provides;

(H) Be subject to such terms of redemption as the ordinance provides;

(I) Be sold at public or private sale as the ordinance provides; and

(J) Be entitled to such priorities on the income, revenues, and receipts generated by the emergency telephone service charge as the ordinance provides.

(f) The ordinance may provide for the execution of a trust indenture or other agreement with a bank or trust company located within or without the state to set forth the undertakings of the political subdivision.

(g) The ordinance or such agreement may include provisions for the custody and investment of the proceeds of the bonds and for the deposits and handling of income, revenues, and receipts for the purpose of payment and security of the bonds and for other purposes.

(h) The Arkansas 911 Board may cooperate and contract with the Arkansas Development Finance Authority to provide for the payment of the principal of, premium if any, interest on, and trustee's and paying agent's fees in connection with bonds issued to finance the acquisition, construction, and operation of the next generation 911 infrastructure for the purposes of establishing a statewide ESINet as required by this subchapter with the review of the General Assembly.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826; Acts 2019, No. 660, § 6.

Amendments. The 2019 amendment substituted "Public safety answer points" for "911 centers" in the section heading; in

(a), inserted "with approval from the Arkansas 911 Board" and substituted "public safety answering point" for "911 public safety communications center"; rewrote (d); and added (h).

12-10-322. Direct access to 911 services required for multiline telephone systems.

(a) A covered multiline telephone system shall allow, as a default setting, any station equipped with dialing facilities to directly initiate a 911 call without requiring a user to dial any other digit, code, prefix, suffix, or trunk access code.

(b) A business service user that owns or controls a multiline telephone system or an equivalent system that uses voice over internet protocol enabled service and provides outbound dialing capacity or access shall configure the multiline telephone system or equivalent system to allow a person initiating a 911 call on the multiline telephone system to directly access 911 service by dialing the digits "911" without an additional digit, code, prefix, suffix, or trunk access code.

(c) A public or private entity that installs or operates a multiline telephone system shall ensure that the multiline telephone system is connected to allow a person initiating a 911 call on the multiline telephone system to directly access 911 service by dialing the digits "911" without an additional digit, code, prefix, suffix, or trunk access code.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826; Acts 2019, No. 660, § 6.

Publisher's Notes. For current provisions concerning the former subject matter of this section before the 2019 amendment, see § 12-10-318(c).

Amendments. The 2019 amendment substituted "Direct access to 911 services required for multiline telephone systems" for "911 centers — Federal, state, local, etc. funds" in the section heading, and rewrote the section.

12-10-323. Authorized expenditures of revenues.

(a)(1) Revenue generated under §§ 12-10-318 and 12-10-326 and transferred from the Arkansas Emergency Telephone Services Board or the Arkansas Public Safety Trust Fund to the Arkansas 911 Board shall be used only for reasonably necessary costs that enhance, operate, and maintain 911 service in the State of Arkansas under the direction of the Arkansas 911 Board.

(2) Reasonably necessary costs shall be determined by the Arkansas 911 Board and include the following:

(A) The engineering, installation, and recurring costs necessary to implement, operate, and maintain a 911 telephone system;

(B) The costs necessary for forwarding and transfer capabilities of calls from the public safety answering point to dispatch centers or to other public safety answering points;

(C) Engineering, construction, lease, or purchase costs to lease, purchase, build, remodel, or refurbish a public safety answering point and for necessary emergency and uninterruptable power supplies for the public safety answering point;

(D) Personnel costs, including salary and benefits, of each position charged with supervision and operation of the public safety answering point and system;

(E) Purchase, lease, operation, and maintenance of consoles, telephone and communications equipment owned or operated by the political subdivisions and physically located within and for the use of the public safety answering point, and radio or microwave towers and equipment with lines that terminate in the public safety answering point;

(F) Purchase, lease, operation, and maintenance of computers, data processing equipment, associated equipment, and leased audio or data lines assigned to and operated by the public safety answering point for the purposes of coordinating or forwarding calls, dispatch, or recordkeeping of 911 calls;

(G) Supplies, equipment, public safety answering point personnel training, vehicles, and vehicle maintenance, if such items are solely and directly related to and incurred by the political subdivision in mapping, addressing, and readdressing for the operation of the public safety answering point; and

(H) Training costs and all costs related to training under this subchapter.

(3) This subsection does not authorize a political subdivision to purchase emergency response vehicles, law enforcement vehicles, or other political subdivision vehicles from such funds.

(b) Expenditure of revenue distributed by the Arkansas 911 Board for purposes not identified in this section is prohibited.

(c) Failure to comply with this section may result in the Arkansas 911 Board's withholding funds from the public safety answering point's quarterly funding distribution.

(d) Appropriations of funds from any source other than §§ 12-10-318, 12-10-321, and 12-10-326 may be expended for any purpose and may supplement the authorized expenditures of this section and may fund other activities of the public safety answering point not associated with the provision of emergency services.

History. Acts 1985, No. 683, § 6; A.S.A. 1947, § 73-1827; Acts 1989, No. 524, § 1; 1991, No. 1196, § 5; 1997, No. 952, § 2; 2003, No. 176, § 1; 2011, No. 640, § 2; 2019, No. 660, § 6.

Amendments. The 2019 amendment rewrote the section.

12-10-325. Training standards.

(a)(1) A public safety agency, a public safety answering point, or a dispatch center may provide training opportunities for public safety answering point and dispatch center personnel through the Division of Law Enforcement Standards and Training and the Arkansas Law Enforcement Training Academy.

(2) The division shall develop training standards for telecommunicators, dispatchers, supervisors, and instructors in Arkansas in consultation with the Association of Public-Safety Communications Officials International, Inc., and the Arkansas 911 Board and submit the training standards to the Arkansas Commission on Law Enforcement Standards and Training for approval.

(3)(A) Training for instructors may include without limitation instructor development, course development, leadership development, and other appropriate 911 instructor training.

(B) Training for telecommunicators, dispatchers, and supervisors may include without limitation:

- (i) Call taking;
- (ii) Customer service;
- (iii) Stress management;
- (iv) Mapping;
- (v) Call processing;
- (vi) Telecommunication and radio equipment training;
- (vii) Training with devices for the deaf;
- (viii) Autism;
- (ix) National Incident Management System training;
- (x) Incident Command System training;
- (xi) National Center for Missing and Exploited Children training;
- (xii) National Emergency Number Association training;
- (xiii) Association of Public-Safety Communications Officials International, Inc., training; and
- (xiv) Other appropriate 911 dispatcher and supervisor training.

(4) An entity that provides training under subdivision (a)(1) of this section shall:

(A) Retain training records created under this section; and

(B) Deliver an annual report to the Arkansas 911 Board of training provided by the entity to verify the dispatcher and supervisor training reported as completed by each public safety answering point annually under § 12-10-318.

(b)(1) A private safety agency may attend training or receive instruction at the invitation of the division.

(2) The division may assess a fee on a private safety agency invited to attend training or receive instruction under this subsection to reimburse the division for costs associated with the training or instruction.

(c)(1) All public safety answering points shall have at least sixty percent (60%) of telecommunicators working in the public safety answering point trained.

(2) All telecommunicators working at a public safety answering point who have worked as a telecommunicator for one (1) year or longer shall be trained.

History. Acts 2011, No. 640, § 3; 2015, No. 919, § 3; 2019, No. 660, § 7; 2019, No. 910, §§ 5836, 5837.

Amendments. The 2019 amendment by No. 660 rewrote (a); added (c); and made stylistic changes.

The 2019 amendment by No. 910 substituted "Division of Law Enforcement

Standards and Training" for "Arkansas Commission on Law Enforcement Standards and Training and the Arkansas Law Enforcement Training Academy" in (a)(1), and substituted "division" for "Arkansas Law Enforcement Training Academy" in (a)(2); and substituted "division" for "commission" throughout (b).

12-10-326. Prepaid wireless public safety charge — Definitions.

(a) As used in this section:

(1) "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction;

(2) "Occurring in this state" means a retail transaction that is:

(A) Conducted in person by a consumer at a business location of a seller in this state;

(B) Treated as occurring in this state for purposes of the gross receipts tax provided under § 26-52-521(b); or

(C) Taxable under § 26-53-106;

(3) "Prepaid wireless public safety charge" means the charge for prepaid wireless telecommunications service that is required to be collected by a seller from a consumer under subsection (b) of this section;

(4)(A) "Prepaid wireless service" means any prepaid wireless service sold to consumers in the state.

(B) "Prepaid wireless service" includes without limitation:

(i) Prepaid wireless cards;

(ii) Telephones or other devices that are loaded with prepaid wireless minutes; and

(iii) Any transaction that reloads a prepaid wireless card or a telephone or other device with prepaid wireless minutes;

(5) "Provider" means a person that provides prepaid wireless telecommunications service under a license issued by the Federal Communications Commission;

(6)(A) "Retail transaction" means each purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(B)(i) "Retail transaction" includes a separate purchase of prepaid wireless telecommunications service that is paid contemporaneously with another purchase of prepaid wireless telecommunications service if separately stated on an invoice, receipt, or similar document provided by the seller to the consumer at the time of sale.

(ii) "Retail transaction" includes a recharge as defined in § 26-52-314 of prepaid wireless telecommunications service;

(7) "Seller" means a person who sells prepaid wireless telecommunications service to another person; and

(8) "Wireless telecommunications service" means a commercial mobile radio service as defined under § 12-10-303.

(b)(1) For each retail transaction occurring in this state, a seller of prepaid wireless services shall collect from the consumer a public safety charge equal to ten percent (10%) of the value of the prepaid wireless service.

(2)(A) The amount of the prepaid wireless public safety charge shall be stated separately on an invoice, receipt, or similar document that is provided to the consumer at the time of sale by the seller or otherwise disclosed to the consumer.

(B) If the amount of the prepaid wireless public safety charge is stated separately on an invoice, receipt, or similar document provided to the consumer at the time of sale by the seller, the amount of the prepaid wireless public safety charge shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the state, a political subdivision of the state, or an intergovernmental agency.

(C)(i) To ensure there is no overlap of the E911 charge previously assessed under this section before October 1, 2019, and the new public safety charge assessed under subdivision (b)(1) of this section, a seller shall continue to collect the public safety charge in effect one (1) day before October 1, 2019, through September 30, 2019.

(ii) The funds collected through September 30, 2019, shall be remitted according to the same terms and process as previously remitted under this section before October 1, 2019.

(D) On and after October 1, 2019, a seller shall begin collecting the public safety charge under subdivision (b)(1) of this section and shall remit the funds as prescribed in subsection (c) of this section.

(c)(1) A seller shall electronically report and pay one hundred percent (100%) of the prepaid wireless public safety charge plus any penalties and interest due to the Secretary of the Department of

Finance and Administration in the same manner and at the same time as the gross receipts tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(2) A seller that meets the prompt payment requirements of § 26-52-503 may deduct and retain two percent (2%) of the prepaid wireless public safety charge.

(d)(1) The Arkansas Tax Procedure Act, § 26-18-101 et seq., applies to a prepaid wireless public safety charge.

(2) If the Department of Finance and Administration becomes aware of any seller who is not collecting and remitting the public safety charge, the department shall provide notice of the requirements under this section and the associated penalties for failure to pay the charge.

(e) The department shall pay all remitted prepaid wireless public safety funds to the Arkansas Public Safety Trust Fund on or before the fifteenth business day of December 2019 and on or before the fifteenth business day of each month thereafter.

(f) A provider or seller is not liable for damages to a person resulting from or incurred in connection with:

(1) Providing or failing to provide 911 service;

(2) Identifying or failing to identify the telephone number, address, location, or name associated with a person or device that is accessing or attempting to access 911 service; or

(3) Providing lawful assistance to a federal, state, or local investigator or law enforcement officer conducting a lawful investigation or other law enforcement activity.

(g) A provider or seller is not liable for civil damages or criminal liability in connection with:

(1) The development, design, installation, operation, maintenance, performance, or provision of 911 service; or

(2) The release of subscriber information to a governmental entity as required by this subchapter.

(h)(1) The prepaid wireless public safety charge imposed by this section shall be the only E911 funding obligation imposed for prepaid wireless telecommunications service in this state.

(2) Except for the prepaid wireless public safety charge imposed under this section, no other tax, fee, surcharge, or other charge shall be imposed upon prepaid wireless telecommunication services by the state, a political subdivision of the state, or an intergovernmental agency for the purpose of implementing and supporting emergency telephone services.

History. Acts 2013, No. 623, § 6; 2019, No. 660, § 8; 2019, No. 910, § 3375.

Amendments. The 2019 amendment by No. 660 substituted “public safety charge” for “E911 service charges” in the section heading, and rewrote the section.

The 2019 amendment by No. 910 substituted “Secretary” for “Director” in (d)(1).

Effective Dates. Acts 2019, No. 660, § 11: Oct. 1, 2019. Effective date clause provided: “Sections 4 and 8 of this act are effective on and after October 1, 2019”.

12-10-327. Restriction on creation of public safety answering point.

A new public safety answering point shall not be established unless the new public safety answering point is established as a result of:

- (1) Consolidation with an existing public safety answering point; or
- (2) Replacement of an existing public safety answering point.

History. Acts 2017, No. 574, § 1; 2019, deleted “until July 1, 2020” following “established” in the introductory language. No. 660, § 9.

Amendments. The 2019 amendment

12-10-328. 911 addressing authority — Data maintenance.

(a) A chief executive shall designate a 911 addressing authority that shall create and maintain street centerline and address point data in a geographic information system format.

(b) The street centerline and address point data created under subsection (a) of this section shall:

(1) Be compatible with the standard database requirements and best practices developed by the Arkansas Geographic Information Systems Office as part of the Arkansas Master Address Program; and

(2) Be transmitted to the office by a method and with a frequency agreed upon by the office and the 911 addressing authority designated under subsection (a) of this section.

History. Acts 2017, No. 663, § 1.

CHAPTER 11

PREVENTION OF PUBLIC OFFENSES

SECTION.

12-11-110. [Repealed.]

12-11-110. [Repealed.]

Publisher’s Notes. This section, concerning drunken, insane, and disorderly persons, was repealed by Acts 2017, No. 423, § 8. The section was derived from

Crim. Code, §§ 383-385, 387; C. & M. Dig., §§ 3353-3357; Pope’s Dig., §§ 4201-4205; A.S.A. 1947, §§ 42-227 — 42-230; Acts 2011, No. 779, § 5.

CHAPTER 12

CRIME REPORTING AND INVESTIGATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS CRIME INFORMATION CENTER.
3. STATE CRIME LABORATORY.
4. SEXUAL ASSAULT — MEDICAL-LEGAL EXAMINATIONS.
9. SEX OFFENDER REGISTRATION ACT OF 1997.
10. CRIMINAL HISTORY INFORMATION AND REPORTING STANDARDS.

SUBCHAPTER

11. STATE CONVICTED OFFENDER DNA DATA BASE ACT.
12. VICTIM NOTIFICATION SYSTEM.
14. TASK FORCE ON RACIAL PROFILING.
15. ARKANSAS STATE CRIMINAL RECORDS ACT.
16. CRIMINAL HISTORY FOR VOLUNTEERS ACT.
17. ADULT AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT ACT.
18. AUTOMATIC LICENSE PLATE READER SYSTEM ACT.
19. LOCATION INFORMATION OF WIRELESS TELECOMMUNICATIONS DEVICE AND GEOLOCATION OF INTERNET PROTOCOL ADDRESS IN EMERGENCY SITUATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-12-103. Pawnshop records — Penalty.
- 12-12-104. Physical evidence in sex offense or violent offense prosecutions — Retention and disposition — Definitions.

SECTION.

- 12-12-105. Controlled substance laboratory seizure reports.
- 12-12-110. Missing or unidentified persons — Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-12-103. Pawnshop records — Penalty.

(a) A pawnshop or pawnbroker doing business in the State of Arkansas shall keep a record showing in detail all property pawned or purchased with the pawnshop or pawnbroker.

(b) The records required under subsection (a) of this section shall include:

(1) A detailed record of each transaction, including the type of identification displayed by the person from whom the property was received;

(2) The name, address, race, sex, height, weight, and date of birth of the person from whom the property was received;

(3) The driver’s license number, personal identification number issued under § 27-16-805, or the number from another form of photographic identification of the person from whom the property was received; and

(4) A description of each item pawned or purchased, including without limitation the identifying numbers or serial numbers.

(c)(1)(A) One (1) copy of the records required under subsection (a) of this section shall be maintained on file with the pawnshop or pawnbroker for a period of three (3) years.

(B) The Director of the Division of Arkansas State Police, a member of the Division of Arkansas State Police, a county sheriff or deputy of the county, or a police officer of the municipality in which the pawnshop or pawnbroker is located shall have access to the records at any reasonable time.

(2) The director, the county sheriff, or the chief of police in the county or municipality in which the pawnshop or pawnbroker is located may require a report of transactions for a period of time that he or she deems necessary for the efficient enforcement of the criminal laws or to aid in criminal investigations.

(d)(1) The failure of a pawnbroker or an owner or operator of a pawnshop to comply with a provision of this section is a violation punishable by a fine of not more than one thousand dollars (\$1,000).

(2) Each day a pawnbroker or owner or operator of a pawnshop fails to comply with this section is a separate offense.

(e)(1) Pawnshops and pawnbrokers shall:

(A) Keep the records required by this section in a designated electronic format; and

(B) Daily upload the records in the designated electronic format to:

(i) A centralized secure tracking system and internet website designated by the chief law enforcement officer of a county, city, or local government; or

(ii) A different centralized secure tracking system and internet website other than the centralized secure tracking system and internet website designated under subdivision (e)(1)(B)(i) of this section if designated by county or municipal ordinance.

(2) The electronic records submitted under this subsection shall be used for the sole purpose of investigating crimes. Pawnshops, pawnbrokers, and pawn customers shall not be required to incur any costs or increased fees as a result of the city, county, or state collecting and processing records required by this section electronically.

History. Acts 1945, No. 231, § 18; 1975, No. 880, § 1; 1985, No. 544, § 1; A.S.A. 1947, § 42-418; Acts 1991, No. 471, § 1; 1995, No. 965, § 1; 2005, No. 1994, § 75; 2007, No. 262, § 1; 2013, No. 404, § 1; 2013, No. 1293, § 1; 2019, No. 910, § 5838.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" twice in (c)(1)(B).

12-12-104. Physical evidence in sex offense or violent offense prosecutions — Retention and disposition — Definitions.

(a) In a prosecution for a sex offense or a violent offense, the law enforcement agency shall preserve, subject to a continuous chain of custody, any physical evidence secured in relation to a trial and sufficient official documentation to locate that evidence.

(b)(1) After a trial resulting in conviction, the evidence shall be impounded and securely retained by a law enforcement agency.

(2) Retention shall be the greater of:

(A) Permanent following any conviction for a violent offense;

(B) For twenty-five (25) years following any conviction for a sex offense; and

(C) For seven (7) years following any conviction for any other felony for which the defendant's genetic profile may be taken by a law enforcement agency and submitted for comparison to the State DNA Data Base for unsolved offenses.

(c) After a conviction is entered, the prosecuting attorney or law enforcement agency having custody of the evidence may petition the court with notice to the defendant for entry of an order allowing disposition of the evidence if, after a hearing and a reasonable period of time in which to respond, the court determines by a preponderance of the evidence that:

(1) The evidence has no significant value for forensic analysis and must be returned to its rightful owner; or

(2) The evidence has no significant value for forensic analysis and is of a size, bulk, or physical character not usually retained by the law enforcement agency and cannot practicably be retained by the agency.

(d) The court may order the disposition of the evidence if the defendant is allowed the opportunity to take reasonable measures to remove or preserve portions of the evidence in question for future testing.

(e)(1) It is unlawful for any person to purposely fail to comply with the provisions of this section.

(2) A person who violates this section is guilty of a Class A misdemeanor.

(f) As used in this section:

(1) "Law enforcement agency" means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal laws, traffic laws, or highway laws of this state;

(2) "Sex offense" means:

(A) Rape, § 5-14-103;

(B) Sexual indecency with a child, § 5-14-110;

(C) Sexual assault in the first degree, § 5-14-124;

(D) Sexual assault in the second degree, § 5-14-125;

(E) Sexual assault in the third degree, § 5-14-126;

- (F) Sexual assault in the fourth degree, § 5-14-127;
 - (G) Incest, § 5-26-202;
 - (H) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
 - (I) Transportation of minors for prohibited sexual conduct, § 5-27-305;
 - (J) Employing or consenting to use of child in sexual performance, § 5-27-402;
 - (K) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
 - (L) Computer child pornography, § 5-27-603;
 - (M) Computer exploitation of a child in the first degree, § 5-27-605(a);
 - (N) Promoting prostitution in the first degree, § 5-70-104;
 - (O) Stalking, § 5-71-229;
 - (P) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(2);
 - (Q) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(2); or
 - (R) Sexual extortion, § 5-14-113; and
- (3) "Violent offense" means:
- (A) Capital murder, § 5-10-101, murder in the first degree, § 5-10-102, or murder in the second degree, § 5-10-103;
 - (B) Manslaughter, § 5-10-104;
 - (C) Kidnapping, § 5-11-102;
 - (D) False imprisonment in the first degree, § 5-11-103;
 - (E) Permanent detention or restraint, § 5-11-106;
 - (F) Robbery, § 5-12-102;
 - (G) Aggravated robbery, § 5-12-103;
 - (H) Battery in the first degree, § 5-13-201;
 - (I) Battery in the second degree, § 5-13-202;
 - (J) Aggravated assault, § 5-13-204;
 - (K) Terroristic threatening in the first degree, § 5-13-301;
 - (L) Domestic battering in the first degree, § 5-26-303, domestic battering in the second degree, § 5-26-304, and domestic battering in the third degree, § 5-26-305;
 - (M) Aggravated assault on family or household member, § 5-26-306;
 - (N) Engaging in a continuing criminal gang, organization, or enterprise, § 5-74-104;
 - (O) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(3);
 - (P) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(3); or
 - (Q) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.

History. Acts 2001, No. 1780, § 11; The 2017 amendment by No. 664 added 2011, No. 779, § 6; 2017, No. 367, § 11; (f)(2)(R).
2017, No. 664, § 6.

Amendments. The 2017 amendment by No. 367 added (f)(3)(Q).

12-12-105. Controlled substance laboratory seizure reports.

(a) Each state and local law enforcement agency shall electronically file a report on the form provided and required by the El Paso Intelligence Center of the United States Drug Enforcement Administration with the Arkansas Crime Information Center within ten (10) days of the agency's seizure of:

(1) Drug paraphernalia or drug precursors that could be utilized in the manufacture of a controlled substance; or

(2) Any laboratory reasonably believed to:

(A) Have been utilized in the illegal manufacture of a controlled substance;

(B) Be currently utilized in the illegal manufacture of a controlled substance; or

(C) Be intended for utilization in the illegal manufacture of a controlled substance.

(b) The report described in subsection (a) of this section shall be on the form provided and required by the El Paso Intelligence Center of the United States Drug Enforcement Administration and shall contain any additional information required by the Arkansas Drug Director.

(c)(1) The Arkansas Crime Information Center shall forward the report described in subsection (a) of this section to the El Paso Intelligence Center of the United States Drug Enforcement Administration and other law enforcement or criminal justice agencies designated by the Arkansas Drug Director.

(2) The Arkansas Drug Director shall promulgate rules regarding the distribution of the reports and statistics generated in accordance with the requirements of this section.

(d)(1) The Director of the State Crime Laboratory shall catalogue the number of controlled substance laboratories reported to the State Crime Laboratory through evidence submission.

(2) For each reported controlled substance laboratory, the Director of the State Crime Laboratory shall record the:

(A) Judicial district where the controlled substance laboratory was located;

(B) Date of seizure of the controlled substance laboratory; and

(C) Name of the seizing law enforcement agency.

(e)(1) On March 31, June 30, September 30, and December 31 of each year after August 12, 2005, the Arkansas Drug Director shall compare the number of reports made to him or her under subsection (a) of this section with the number of reports made to the State Crime Laboratory under subsection (d) of this section.

(2) Any discrepancy in the number of reports described in subdivision (e)(1) of this section shall be recorded by the Arkansas Drug Director.

(3) The Arkansas Drug Director shall request completion of a reporting form by any law enforcement agency in the state that has failed to comply with a requirement of subsection (a) of this section.

(f) The failure of any law enforcement agency to comply with a requirement of this section may be considered by a state board or agency as a factor for the withholding of awards or grant moneys or other funds that relate to controlled substance enforcement.

History. Acts 2005, No. 1873, § 1; Laboratory” for “Executive Director of the State Crime Laboratory” in (d)(1) and the

Amendments. The 2019 amendment substituted “Director of the State Crime introductory language of (d)(2).

12-12-110. Missing or unidentified persons — Definitions.

(a) As used in this section:

(1) “Missing person” means a person, including a child under eighteen (18) years of age, reported to a law enforcement agency as missing and unaccounted for from expected and normal activities; and

(2) “Unidentified person” means a person living or deceased who is unidentified after all available methods used to identify a person have been exhausted, including a decedent released to the State Crime Laboratory in which the identity of the decedent cannot be established to the satisfaction of the State Medical Examiner.

(b)(1) To the extent that this section is not duplicative with § 12-12-205, the actions under this section shall be undertaken by the law enforcement agency with jurisdiction in the event of a report of a missing person or unidentified person.

(2) Entry of missing person or unidentified person information into the National Missing and Unidentified Persons System does not relieve the obligations of a law enforcement agency under § 12-12-205.

(c) A law enforcement agency shall input the following data, if available for an unidentified person, into the National Missing and Unidentified Persons System:

(1) Copies of fingerprints on standardized fingerprint cards measuring eight inches by eight inches (8" x 8") or the equivalent digital image, including partial prints of any fingers;

(2) Forensic dental report or radiology imaging;

(3) Detailed personal descriptions;

(4) Deoxyribonucleic acid (DNA) information;

(5) Radiology imaging and medical data; and

(6) All other identifying data, including date and place of death.

(d) When a missing person or unidentified person report is received, a law enforcement agency shall initiate the following procedures within thirty (30) days of receiving the missing person or unidentified person report:

(1) Submit the missing person or unidentified person case to the National Missing and Unidentified Persons System and to any database of missing persons or unidentified persons currently required by the law enforcement agency, providing all appropriate data;

(2)(A) Locate and obtain biometric records, including medical and dental records, medical and dental X-rays, or other medical imaging, and enter those records into the National Missing and Unidentified Persons System.

(B) Records described under subdivision (d)(2)(A) of this section are considered confidential and shall not be released to the public;

(3)(A) Utilize the National Missing and Unidentified Persons System's family reference sample submission kits and obtain voluntary DNA samples from appropriate family members to submit to the laboratory for DNA testing and to an institution of higher education that specializes in DNA identification for a full genetic profile, including testing of mitochondrial DNA, short tandem repeats on the Y-chromosome, and nuclear analyses, to be documented in the National Missing and Unidentified Persons System missing persons or unidentified persons file, and submitted to the Federal Bureau of Investigation's National DNA Index System using the Combined DNA Index System.

(B) If necessary, the law enforcement agency may request assistance in obtaining family reference DNA samples; and

(4) Attempt to locate any fingerprints from available resources and submit the fingerprints to the National Missing and Unidentified Persons System.

(e)(1) A law enforcement agency shall not require a delay before accepting or investigating a report of a missing person when reliable information has been provided to the law enforcement agency that the person is missing.

(2) A law enforcement agency shall not mandate the appearance of a next of kin before initiating a missing persons investigation.

(f)(1) If a law enforcement agency receives a report of a missing person from another law enforcement agency or from a medical examiner, the law enforcement agency shall maintain a record of the case file.

(2) The information contained in a report of a missing person from another law enforcement agency or from a medical examiner shall be available to a law enforcement agency attempting to identify unidentified persons.

(g)(1) A law enforcement agency shall not establish or maintain a policy that requires the observance of a waiting period before accepting and investigating a report of a missing child.

(2) Upon receipt of a report of a missing child, a law enforcement agency shall enter the child into the National Missing and Unidentified Persons System.

(h) When a person previously reported missing has been found or when an unidentified person has been identified, the reporting law enforcement agency or the Division of Arkansas State Police shall report to the National Missing and Unidentified Persons System.

(i) This section does not prohibit a law enforcement agency from maintaining case files related to missing persons or unidentified bodies.

History. Acts 2019, No. 920, § 2.

Cross References. Missing and unidentified persons training, § 12-9-123.

SUBCHAPTER 2 — ARKANSAS CRIME INFORMATION CENTER

SECTION.

12-12-201. Creation — Director.

12-12-202. Supervisory board — Members — Meetings.

12-12-203. Supervisory board — Duties.

12-12-205. Missing Persons Information Clearinghouse — Definitions.

SECTION.

12-12-207. Maintenance and operation of information system.

12-12-211. Access to records.

12-12-212. Release or disclosure to unauthorized person — Penalty.

12-12-219. Records of local and regional detention facilities.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-12-201. Creation — Director.

(a) There is created the Arkansas Crime Information Center, under the supervision of the Supervisory Board for the Arkansas Crime Information Center established by this subchapter.

(b) This center shall consist of the Director of the Arkansas Crime Information Center and such other staff of the Department of Public Safety under the general supervision of the director as may be necessary to administer the services of this subchapter, subject to the approval of funds authorized by the General Assembly.

(c) The board shall name the director in consultation with the Secretary of the Department of Public Safety.

History. Acts 1971, No. 286, § 1; 1975, No. 742, § 1; A.S.A. 1947, § 5-1101; Acts 2019, No. 910, § 5840.

Amendments. The 2019 amendment, in (b), substituted “the Director of the Arkansas Crime Information Center” for

“a director” and inserted “of the Department of Public Safety”; and substituted “in consultation with the Secretary of the Department of Public Safety” for “of the center” in (c).

12-12-202. Supervisory board — Members — Meetings.

(a) There is created a Supervisory Board for the Arkansas Crime Information Center.

(b) The board shall consist of fourteen (14) members:

(1) The Attorney General or one (1) of his or her assistants;

(2) The Chief Justice of the Supreme Court or his or her designated agent;

(3) A member designated by the Arkansas Prosecuting Attorneys Association;

(4) A member designated by the Arkansas Sheriffs' Association;

(5) A member designated by the Arkansas Association of Municipal Judges;

(6) A member designated by the President of the Arkansas Bar Association who is regularly engaged in criminal defense work;

(7) Two (2) citizens of the State of Arkansas, to be appointed by the Governor;

(8) A member designated by the Arkansas Municipal Police Association;

(9) The Director of the Division of Correction or his or her designated agent;

(10) A member designated by the Arkansas Association of Chiefs of Police;

(11) A member designated by the Association of Arkansas Counties;

(12) The Director of the Division of Arkansas State Police or his or her designated agent; and

(13) The Governor or a member of the Governor's staff designated by the Governor.

(c) No member shall continue to serve on the board when the member no longer officially represents the function for which the member was appointed, except the citizens appointed by the Governor, who shall serve for a period of four (4) years.

(d) The board, for cause, may remove any board member and shall notify the Governor of the removal and the reason therefor.

(e)(1) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(2) The board members shall receive no other compensation, expense reimbursement, or in-lieu-of payments except as provided in this subsection.

(f) The board shall meet at such times and places as it shall deem appropriate.

(g) A majority of the board shall constitute a quorum for transacting any business of the board.

History. Acts 1971, No. 286, §§ 3-5; 1975, No. 742, §§ 3-5; 1977, No. 542, § 1; A.S.A. 1947, §§ 5-1103 — 5-1105; Acts 1995, No. 1214, § 1; 1997, No. 250, § 66; 1997, No. 1354, § 30; 2001, No. 1288, §§ 3, 4; 2019, No. 910, §§ 5841, 5842.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (b)(9), and substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (b)(12).

12-12-203. Supervisory board — Duties.

(a) The duties and responsibilities of the Supervisory Board for the Arkansas Crime Information Center are to:

- (1) Maintain and operate the Arkansas Crime Information Center;
- (2) Provide that the information obtained by this subchapter shall be restricted to the items specified in this subchapter and so administer the center so as not to accumulate any information or distribute any information that is not specifically approved in this subchapter;
- (3) Provide for adequate security safeguards to ensure that the data available through this system are used only by properly authorized persons and agencies;
- (4) Provide for uniform reporting and tracking systems to report data authorized by this subchapter. Standard forms and procedures for reporting authorized data under this subchapter shall be prescribed by the board;
- (5) Establish such rules and policies as may be necessary for the efficient and effective use and operation of the center under the limitations imposed by the terms of this subchapter;
- (6) Provide for the reporting of authorized information under the limitations of this subchapter to the United States Department of Justice under its national system of crime reporting; and
- (7) Provide for research and development activities that will encourage the application of advanced technology, including the development of prototype systems and procedures, the development of plans for the implementing of these prototypes, and the development of technological expertise which can provide assistance in the application of technology in record and communication systems in Arkansas.

(b) The board shall establish its own rules for performance of the responsibilities charged to the board in this subchapter.

History. Acts 1971, No. 286, §§ 3, 5; 1975, No. 742, §§ 3, 5; A.S.A. 1947, §§ 5-1103, 5-1105; Acts 2019, No. 315, §§ 856, 857.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(5); and deleted “and regulations” following “rules” in (b).

12-12-205. Missing Persons Information Clearinghouse — Definitions.

(a) There is created a Missing Persons Information Clearinghouse within the Arkansas Crime Information Center.

(b) The clearinghouse shall be administered by the Director of the Arkansas Crime Information Center.

(c) The clearinghouse shall:

- (1) Establish a computerized system to communicate information on:
 - (A) Persons reported to be missing; and
 - (B) Unidentified deceased persons;
- (2) Interface with the National Crime Information Center for the exchange of information on:
 - (A) Missing persons; and

(B) Unidentified deceased persons;

(3) Establish educational services and publications deemed appropriate to aid in dealing with missing persons;

(4) Be authorized to issue rules and procedures for the orderly collection and entry of information on missing persons and unidentified deceased persons, as well as rules governing access to information on missing persons and unidentified deceased persons;

(5) Annually compile and make available statistical information on the number of missing persons and unidentified deceased persons entered into the computerized system of the clearinghouse and, where available, information on the number located; and

(6) Release information upon request to any court in a pending custody proceeding when the court needs information concerning whether a child has been reported as missing.

(d)(1) Upon receiving notice of a missing child, a law enforcement agency shall complete a missing person report and immediately enter identifying and descriptive information about the missing child into the computerized system of the clearinghouse.

(2)(A)(i) Upon receiving notice of a missing adult, a law enforcement agency shall complete a missing person report and immediately enter identifying and descriptive information about the missing adult into the computerized system of the clearinghouse, provided the entering agency has signed documentation from a family member, friend, or other authoritative source, including a signed report by an investigating official when other documentation is not reasonably attainable, stating the conditions under which the person is declared missing.

(ii) Such documentation will aid in the protection of the individual's right of privacy.

(B) Missing adults shall be entered based on categories established by the Federal Bureau of Investigation, and the categories may include disability, endangered, involuntary, or catastrophe victim.

(3) It shall be the duty of the initial investigating law enforcement agency to immediately cancel the computer entry when the missing child or missing adult is located or returned.

(4) No law enforcement agency shall delay an investigation or entry of missing persons information based on an agency rule or policy which specifies an automatic waiting period.

(e) A person shall be deemed guilty of a Class A misdemeanor who knowingly makes to a law enforcement agency:

(1) A false report of a missing person; or

(2) A false statement in any missing person report.

(f) When the unidentified body of a deceased individual is found, the law enforcement agency receiving the report shall immediately enter identifying and descriptive information about the unidentified body into the computerized system of the clearinghouse according to standards established by the center and the Federal Bureau of Investigation.

(g) When an individual is found whose identity is unknown and cannot be readily determined, the law enforcement agency receiving the report shall immediately enter identifying and descriptive information about the individual into the computerized system of the clearinghouse according to standards established by the center and the Federal Bureau of Investigation.

(h) As used in this section:

(1) "Missing adult" means any person:

(A) Who is eighteen (18) years of age or older;

(B) Whose residence is in Arkansas or is believed to be in Arkansas; and

(C) Who has been reported to a law enforcement agency as missing under circumstances indicating that:

(i) The individual has a physical or mental disability as evidenced by written documentation;

(ii) The individual is missing under circumstances indicating that the disappearance was not voluntary;

(iii) The individual is missing under circumstances indicating that the individual's safety may be in danger; or

(iv) The individual is missing as a result of a natural or intentionally caused catastrophe;

(2) "Missing child" means any person:

(A) Who is under eighteen (18) years of age;

(B) Whose residence is in Arkansas or is believed to be in Arkansas;

(C) Whose location is unknown or who has been taken, enticed, or kept from any person entitled by law or a court decree or order to the right of custody; and

(D) Who has been reported as missing to a law enforcement agency; and

(3) "Missing person report" means a report prepared on a form designated by the center for use by law enforcement agencies to record missing persons information.

(i) The Attorney General shall require each law enforcement agency to comply with the mandatory entry provisions found in subdivisions (d)(1) and (2) of this section and in subsections (f) and (g) of this section and may seek writs of mandamus or other appropriate remedies to enforce this section.

(j) Missing person entries and unidentified deceased person entries, regardless of age, shall remain in the computerized system of the clearinghouse indefinitely or until the missing person is located or returns or positive identification is obtained and the investigation is completed and closed.

(k) The clearinghouse may assist in:

(1) Public notification;

(2) Providing informational resources to families of missing persons; and

(3) Constructing and distributing missing person flyers.

History. Acts 1985, No. 764, §§ 1-4; A.S.A. 1947, §§ 5-1124 — 5-1127; Acts 1987, No. 485, § 1; 1987, No. 486, § 1; 2001, No. 80, § 1; 2019, No. 315, § 858.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (c)(4).

12-12-207. Maintenance and operation of information system.

(a) The Arkansas Crime Information Center shall be responsible for providing for the maintenance and operation of the computer-based Arkansas Crime Information System.

(b) The use of the system is restricted to serving the informational needs of governmental criminal justice agencies and others specifically authorized by law through a communications network connecting local, county, state, and federal authorities to a centralized state repository of information.

(c) The Supervisory Board for the Arkansas Crime Information Center shall approve the creation and maintenance of each file in the system, establish the entry criteria and quality control standards for each file, and conduct an annual review of the appropriateness and effectiveness of all files and services provided by the center.

(d)(1) The center shall collect data and compile statistics on the nature and extent of crime problems in Arkansas and compile other data related to planning for and operating criminal justice agencies.

(2) The data collected under this subsection shall include the address where a criminal offense occurred.

(3) The center shall also periodically publish statistics and report such information to the Governor, the General Assembly, and the general public.

(e) The center shall be authorized to design and administer uniform record systems, uniform crime reporting systems, and other programs to be used by criminal justice agencies to improve the administration of justice in Arkansas.

History. Acts 1971, No. 286, §§ 2, 9; 1975, No. 742, § 2; 1981, No. 612, § 1; 1983, No. 282, § 1; A.S.A. 1947, §§ 5-1102, 5-1102.3, 5-1109, 5-1117; Acts 1993, No. 535, § 6; 1993, No. 551, § 6; 1994 (2nd Ex. Sess.), No. 37, § 1; 1994 (2nd Ex. Sess.), No. 38, § 1; 1995, No. 498, § 1; 2019, No. 766, § 1.

Amendments. The 2019 amendment inserted (d)(2) and redesignated former (d)(2) as (d)(3).

12-12-211. Access to records.

(a)(1) The Arkansas Crime Information Center shall make criminal history records on persons available in accordance with §§ 12-12-1008 — 12-12-1011.

(2) Release of other noncriminal history records shall be in accordance with policies and rules established by the Supervisory Board for the Arkansas Crime Information Center.

(b)(1) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall be considered a criminal justice agency solely for the purpose of securing

information from the center regarding the address or whereabouts of any deserting parent from whom the office is charged with collecting child support.

(2) Any information received by the Crime Victims Reparations Board through the office of the Attorney General obtained from the center pursuant to § 16-90-712 shall not be available for examination except by the affected claimant or his or her duly authorized representative.

(3)(A) It shall be unlawful for any person to disclose information obtained under this subsection except:

(i) For the purpose of performing the duties of the:

(a) Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration; or

(b) Crime Victims Reparations Board; or

(ii) Upon court order.

(B) Upon conviction, any person violating subdivision (b)(3)(A) of this section shall be guilty of a Class A misdemeanor.

(c)(1) Except as provided in subdivision (c)(2) of this section, an elected law enforcement officer of a political subdivision of this state shall not be allowed access to information from the center unless either the elected law enforcement officer or a law enforcement officer within his or her department has successfully completed the preparatory program of police training required by the Arkansas Commission on Law Enforcement Standards and Training for certification of law enforcement officers.

(2) A constable shall have access to information from the center if the commission certifies that the constable has completed the course required by § 14-14-1314.

(d)(1) The State Board of Law Examiners shall be deemed to be a regulatory agency having specific statutory access to the records of the center as provided by subsection (a) of this section.

(2) In that capacity, the State Board of Law Examiners shall require each applicant for admission to the Bar of Arkansas to be fingerprinted.

(3) The center is authorized to accept fingerprints or other information provided to it by the State Board of Law Examiners and is further authorized to release to the State Board of Law Examiners any requested information, including state, multistate, and Federal Bureau of Investigation criminal history records, as they may relate to applicants for admission to the bar.

(e) The center shall provide access to the insurance verification database that contains the information provided to the Department of Finance and Administration or to a vendor designated by the department under § 27-22-107 to law enforcement officers during the course of traffic stops.

History. Acts 1971, No. 286, § 2; 1975, 1997, No. 243, § 1; 1997, No. 826, § 2; No. 742, § 2; 1981, No. 902, §§ 1, 2; A.S.A. 1999, No. 1224, § 1; 2003, No. 998, § 3; 1947, §§ 5-1102, 5-1118, 5-1119; Acts 2007, No. 841, § 1; 2009, No. 476, § 1; 1993, No. 605, § 1; 1995, No. 1184, § 29; 2019, No. 315, § 859.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(2).

12-12-212. Release or disclosure to unauthorized person — Penalty.

(a) A person is guilty of a Class A misdemeanor upon conviction if the person knowingly:

(1) Accesses information or obtains information collected and maintained under this subchapter for a purpose not specified by this subchapter; or

(2) Releases or discloses information maintained under this subchapter to another person who lacks authority to receive the information.

(b) A person is guilty of a Class D felony upon conviction if the person violates subsection (a) of this section for the purpose of:

(1) Furthering the commission of a misdemeanor offense or felony offense by the person or another person;

(2) Enhancing or assisting a person’s position in a legal proceeding in this state or influencing the outcome of a legal proceeding in this state for the benefit of the person or a member of the person’s family;

(3) Causing a pecuniary or professional gain for the person or a member of the person’s family; or

(4) Political purposes for the person or a member of the person’s family.

History. Acts 1971, No. 286, § 10; 1975, No. 742, § 9; A.S.A. 1947, § 5-1110; Acts 1997, No. 826, § 3; 2011, No. 779, § 7; 2011, No. 1224, § 1; 2017, No. 250, § 3; 2017, No. 845, § 2.

Amendments. The 2017 amendment by No. 250 added “knowingly” at the end of the introductory language in (a); in (a)(1), substituted “Accesses” for “Know-

ingly accesses”; and, in (a)(2), substituted “Releases” for “Knowingly releases”.

The 2017 amendment by No. 845 added “knowingly” at the end of the introductory language in (a); in (a)(1), substituted “Accesses” for “Knowingly accesses” and deleted “willfully” preceding “obtains”; and substituted “Releases” for “Knowingly releases” in (a)(2).

12-12-219. Records of local and regional detention facilities.

(a)(1) The Arkansas Crime Information Center shall permit and encourage the entry of data by a local or regional detention facility, such as a county jail, into a database maintained by the center and accessible by an entity as determined by the Supervisory Board for the Arkansas Crime Information Center.

(2) Data provided by a regional detention facility shall facilitate analysis of inmate populations in local detention facilities, including, but not limited to:

(A) Local or regional detention facility inmate population, including the number of inmates currently housed over the recognized maximum capacity of the local or regional detention facility; and

(B) The types and number of offenses for which the inmates are being housed in the local or regional detention facility.

(b) The types of data entered into a database under this section may include:

(1) Information concerning the inmates admitted to and released from the local or regional detention facility, including without limitation:

(A) The state identification number of the inmate;

(B) The offenses the inmates committed or were accused of committing; and

(C) The dates the inmates were both taken into custody and released;

(2)(A) A record of any mental health screening of an inmate administered by a law enforcement agency or healthcare facility.

(B) The results of a mental health screening administered by a law enforcement agency or healthcare facility may be entered into the database as permitted by state or federal law; and

(3) Any other data that that would be of assistance to a law enforcement agency, state agency, legislative committee, academic researcher, or other entity permitted to access the data.

(c) The center shall promulgate rules necessary to implement this section.

History. Acts 2017, No. 423, § 9.

SUBCHAPTER 3 — STATE CRIME LABORATORY

SECTION.

12-12-301. Establishment.

12-12-303. Board's powers and duties generally.

12-12-304. Director of the State Crime Laboratory.

12-12-305. Housing and equipment — Functions.

12-12-306. State Medical Examiner.

12-12-309. Utilization of outside personnel.

12-12-310. Reimbursement for use of outside faculty.

12-12-311. Cooperation by others required — Tort immunity.

12-12-312. Records confidential and privileged — Exception — Release.

SECTION.

12-12-313. Records as evidence — Analyst's testimony.

12-12-315. Notification of certain deaths.

12-12-316. Transportation of corpses.

12-12-317. Death certificates.

12-12-318. Examinations, investigations, and postmortem examinations — Authorization and restrictions.

12-12-319. Embalming corpse subject to examination, investigation, or autopsy — Penalty.

12-12-322. Hazardous duty pay.

12-12-324. Testing by State Crime Laboratory.

12-12-326. Autopsies — Line-of-duty death — Definitions.

Effective Dates. Acts 2017, No. 147, § 5; Feb. 7, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkan-

sas that current law that generally applies to medical schools only references the University of Arkansas for Medical Sciences; that the establishment of addi-

tional medical schools in this state requires clarification that these laws apply to any medical schools in this state; and that this act is immediately necessary to ensure that the additional medical schools and their faculty can operate fully and efficiently to protect the well-being of Arkansans. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General As-

sembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-12-301. Establishment.

- (a) There is established a State Crime Laboratory.
- (b) The laboratory shall offer services to law enforcement in:
 - (1) Forensic pathology;
 - (2) Toxicology;
 - (3) Physical evidence analysis;
 - (4) DNA analysis;
 - (5) Drug analysis;
 - (6) Latent fingerprint identification;
 - (7) Firearms and toolmarks analysis;
 - (8) Digital evidence analysis; and
 - (9) Other such areas as the State Crime Laboratory Board deems necessary and appropriate.

History. Acts 1977, No. 517, § 1; 1979, No. 864, § 1; A.S.A. 1947, § 42-1201; Acts 2019, No. 636, § 1.

Amendments. The 2019 amendment rewrote (b).

12-12-303. Board’s powers and duties generally.

(a) The State Crime Laboratory Board shall promulgate such policies and rules as shall be necessary to carry out the intent and purpose of this subchapter along with the specific duties and responsibilities set out in this subchapter.

(b) The board is authorized to accept gifts, grants, or funds from persons, associations, corporations, foundations, and federal or state governmental agencies and to use the gifts, grants, or funds for purposes of carrying out this subchapter or for any other purposes not

inconsistent with the purposes and intent of this subchapter which may be authorized by the board.

(c) The board is further authorized by this subchapter to enter into contracts, not inconsistent with law, and to do such things as it may deem necessary or appropriate to properly carry out the purposes and intent of this subchapter.

History. Acts 1979, No. 864, §§ 4, 21; A.S.A. 1947, §§ 42-1206, 42-1223; Acts 2019, No. 315, § 860.

Amendments. The 2019 amendment substituted “policies and rules” for “policies, rules, and regulations” in (a).

12-12-304. Director of the State Crime Laboratory.

(a)(1) The State Crime Laboratory shall be headed by a director who shall be appointed by the Governor and who shall serve at the pleasure of the Governor.

(2) The director shall report to the Secretary of the Department of Public Safety.

(b) The director may delegate specific duties to competent and qualified associates, assistants, and deputies who may act for the director within the scope of the authority granted him or her, subject, however, to such rules as may be prescribed by the State Crime Laboratory Board.

(c) The board shall prescribe the duties, responsibilities, compensation, and qualifications for the director.

History. Acts 1979, No. 864, §§ 5, 6; A.S.A. 1947, §§ 42-1207, 42-1208; Acts 2019, No. 315, § 861; 2019, No. 910, § 5843.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b).

The 2019 amendment by No. 910 substituted “Director of the State Crime

Laboratory” for “Executive director” in the section heading; redesignated (a) as (a)(1); in (a)(1), substituted “a director” for “an executive director” and added “and who shall serve at the pleasure of the Governor”; added (a)(2); substituted “director” for “executive director” in (b) and (c); and made a stylistic change.

12-12-305. Housing and equipment — Functions.

(a) There shall be established under the supervision of the Director of the State Crime Laboratory a central office and laboratory facility sufficient and adequate to house the various functions of the State Crime Laboratory as set out in this subchapter and as may be necessary and proper for the laboratory to perform in carrying out its official duties and functions as provided by law.

(b) The laboratory shall have the equipment and personnel necessary to respond to the needs of all law enforcement agencies in the State of Arkansas with respect to the following functions:

(1) Forensic toxicology, including without limitation chemical testing and analysis of body fluids and the performance of procedures to determine the presence and significance of toxic agents both in the

investigation of death cases authorized by this subchapter and in other appropriate cases;

(2) Criminalistics, including without limitation chemical testing of trace evidence, physical and microscopic analysis of evidence, latent fingerprint identification and classification, firearms and toolmarks identification, serology, DNA analysis, DNA database administration, and computer forensic analysis;

(3) Drug analysis, including without limitation analyzing and identifying substances suspected as being controlled, illicit, or contraband drugs;

(4) Pathology and biology, including the investigation and determination of the cause and manner of deaths that become subject to the jurisdiction of the State Medical Examiner under § 12-12-318 and the general application of the medical sciences to assist the criminal justice system in the State of Arkansas; and

(5) Any other laboratory divisions, sections, or functions that, in the opinion of the State Crime Laboratory Board, may serve the needs of law enforcement in the State of Arkansas for laboratory analysis.

History. Acts 1979, No. 864, §§ 7, 8; substituted “Director of the State Crime Laboratory” for “Executive Director of the State Crime Laboratory” in (a).
A.S.A. 1947, §§ 42-1209, 42-1210; 2013, No. 323, § 1; 2019, No. 910, § 5844.

Amendments. The 2019 amendment

12-12-306. State Medical Examiner.

(a) The Director of the State Crime Laboratory shall appoint and employ a State Medical Examiner with the approval of the State Crime Laboratory Board and in consultation with the Secretary of the Department of Public Safety.

(b) The director may remove the examiner only for cause and with the approval of the board.

History. Acts 1991, No. 383, § 3; 2011, No. 775, § 1; 2019, No. 910, § 5845.

Amendments. The 2019 amendment, in (a), substituted “Director of the State Crime Laboratory” for “Executive Director of the State Crime Laboratory” and added “and in consultation with the Secretary of the Department of Public Safety”; and substituted “director” for “executive director” in (b).

12-12-309. Utilization of outside personnel.

(a) The State Crime Laboratory Board may authorize the Director of the State Crime Laboratory to contract with a medical school in this state accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education, or with other persons or institutions, to obtain services with which to perform the duties set forth in this subchapter.

(b) The participation of a medical school’s faculty or of any other person or institution in carrying out the provisions of this subchapter

shall in no way affect tenure or any other status with the medical school or institution.

History. Acts 1979, No. 864, § 5; A.S.A. 1947, § 42-1207; Acts 2017, No. 147, § 2; 2019, No. 910, § 5846.

Amendments. The 2017 amendment, in (a), substituted “may” for “is empowered to” and “a medical school in this state accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education” for “the Uni-

versity of Arkansas for Medical Sciences, University of Arkansas for Medical Sciences Medical Center”; and, in (b), substituted “a medical school’s” for “the University of Arkansas for Medical Sciences”, inserted the first occurrence of “or institution”, and substituted “the medical school or institution” for “any such institution or agency”.

The 2019 amendment substituted “Director of the State Crime Laboratory” for “Executive Director of the State Crime Laboratory” in (a).

12-12-310. Reimbursement for use of outside faculty.

(a) The State Crime Laboratory shall reimburse the Graduate Institute of Technology and a medical school in this state accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education for the use of personnel from the institute and the medical school in performing services for the laboratory.

(b) The participation of a medical school’s faculty and institute faculty in carrying out the provisions of this subchapter shall in no way affect their tenure with the medical school and institute.

History. Acts 1977, No. 517, § 3; A.S.A. 1947, § 42-1204; Acts 2017, No. 147, § 2.

Amendments. The 2017 amendment rewrote (a); and, in (b), substituted “a

medical school’s” for “center” and “the medical school and institute” for “their institution”.

12-12-311. Cooperation by others required — Tort immunity.

(a)(1) All law enforcement officers and other state, county, and city officials, as well as private citizens, shall fully cooperate with the staff of the State Crime Laboratory in making any investigation provided for or authorized in this subchapter.

(2)(A) The prosecuting attorney for each judicial district shall provide the laboratory each month with a list of cases having been adjudicated through plea negotiations and which require no further laboratory analysis.

(B) The monthly list shall contain the laboratory case number and will be used by the laboratory for the purpose of returning evidence on which analysis is no longer necessary, thus reducing the backlog of cases found on the evidence shelves at the laboratory.

(3) Nothing in this subchapter shall impair the authority of the prosecuting attorney to require further analysis of evidence in any case having been adjudicated through plea negotiations.

(4)(A) Upon completion of all requested analysis of submitted evidence by the laboratory, the evidence shall be returned to the submitting agency within thirty (30) days.

(B) The submitting agency shall maintain and store evidence until released by a court of competent jurisdiction or the prosecuting attorney.

(b) Any physician or other person in attendance or present at the death of a person, or any hospital, if death occurs therein and results from such conditions and circumstances as set out in § 12-12-315, shall promptly notify the chief law enforcement official of the county or municipality which shall have jurisdiction and the laboratory of the death and shall assist in making available dead bodies and related evidence as may be requested by the Director of the State Crime Laboratory or his or her staff or by the law enforcement agency conducting the investigation.

(c) Any physician, surgeon, dentist, hospital, or other supplier of healthcare services shall cooperate and make available to the director or his or her staff the records, reports, charts, specimens, or X-rays of the deceased as may be requested where death occurs and an investigation is being conducted under the provisions of this subchapter.

(d) No person, institution, or office in this state which shall make available information or material under this section shall be liable for violating any criminal law of this state, nor shall any person, institution, or office be held liable in tort for compliance with this section.

History. Acts 1979, No. 864, § 12; A.S.A. 1947, § 42-1214; Acts 1999, No. 767, § 1; 2019, No. 910, § 5847.

Amendments. The 2019 amendment substituted "Director of the State Crime

Laboratory" for "Executive Director of the State Crime Laboratory" in (b); and substituted "director" for "executive director" in (c).

12-12-312. Records confidential and privileged — Exception — Release.

(a)(1)(A)(i) The records, files, and information kept, obtained, or retained by the State Crime Laboratory under this subchapter are privileged and confidential.

(ii) However, the laboratory shall grant access to records pertaining to a defendant's criminal case to the following persons:

(a) The defendant;

(b) The public defender or other attorney of record for the defendant; and

(c) The prosecuting attorney or deputy prosecuting attorney having jurisdiction over the criminal case.

(iii) The records, files, and information shall not be released to a person or entity other than those listed in subdivision (a)(1)(A)(ii) of this section except at the direction of a court of competent jurisdiction

or the prosecuting attorney having criminal jurisdiction over the case.

(iv) In cases in which the cause and manner of death are not criminal in nature, the laboratory may communicate without prior authorization required under subdivision (a)(1)(A)(iii) of this section with the decedent's next of kin or the next of kin's designee, including without limitation:

- (a) Parents;
- (b) Grandparents;
- (c) Siblings;
- (d) Spouses;
- (e) Adult children; or
- (f) Legal guardians.

(B)(i) This section does not diminish the right of a defendant, his or her attorney, or an attorney who has provided a signed release from the defendant to full access to all records pertaining to the case.

(ii) Promptly after discovering any evidence in a defendant's case that is kept, obtained, or retained by the laboratory and which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the defendant's punishment, the prosecuting attorney with jurisdiction over the case shall disclose the existence of the evidence to the defendant or his or her attorney.

(C) The Department of Health may access autopsy records, files, and information under this subchapter for the purpose of implementing the quality improvement provisions of the Trauma System Act, § 20-13-801 et seq., and the rules adopted by the State Board of Health under the Trauma System Act, § 20-13-801 et seq.

(2) However, a full report of the facts developed by the State Medical Examiner or his or her assistants shall be promptly filed with the law enforcement agencies, county coroner, and prosecuting attorney of the jurisdiction in which the death occurred.

(b) The State Crime Laboratory Board shall promulgate rules not contrary to law regarding the release of reports and information by the staff of the laboratory.

(c) All records, files, and information obtained or developed by the laboratory pertaining to a capital offense committed by a defendant who is subsequently sentenced to death for the commission of the capital offense shall be preserved and retained until the defendant's execution.

History. Acts 1969, No. 321, § 11; 1979, No. 864, § 16; A.S.A. 1947, §§ 42-621, 42-1218; Acts 1993, No. 1304, § 1; 1999, No. 519, § 1; 2001, No. 211, § 1; 2001, No. 917, § 1; 2011, No. 892, § 1; 2013, No. 298, § 1; 2015, No. 1040, § 1; 2019, No. 1001, § 1.

Amendments. The 2019 amendment rewrote (a)(1)(A); and substituted "his or her attorney, or an attorney who has provided a signed release from the defendant" for "or his or her attorney" in (a)(1)(B)(i).

12-12-313. Records as evidence — Analyst's testimony.

(a) The records and reports of autopsies, evidence analyses, drug analyses, and any investigations made by the State Crime Laboratory under the authority of this subchapter shall be received as competent evidence as to the matters contained therein in the courts of this state subject to the applicable rules of criminal procedure or civil procedure when duly attested to by the Director of the State Crime Laboratory or his or her assistants, associates, or deputies.

(b) This section does not abrogate a defendant's right of cross-examination if notice of intention to cross-examine is given before the date of a hearing or trial pursuant to the applicable rules of criminal procedure or civil procedure.

(c) The testimony of the appropriate analyst may be compelled by the issuance of a proper subpoena, in which case the records and reports shall be admissible through the analyst who shall be subject to cross-examination by the defendant or his or her counsel, either in person or via two-way closed-circuit or satellite-transmitted television pursuant to subsection (e) of this section.

(d)(1) All records and reports of an evidence analysis of the laboratory shall be received as competent evidence as to the facts in any court or other proceeding when duly attested to by the analyst who performed the analysis.

(2) The defendant shall give at least ten (10) days' notice prior to the proceedings that he or she requests the presence of the analyst of the laboratory who performed the analysis for the purpose of cross-examination.

(3) Nothing in this subsection shall be construed to abrogate the defendant's right to cross-examine.

(e) Except trials in which the defendant is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, in all criminal trials upon motion of the prosecutor the court may allow the prosecutor to present the testimony of the appropriate analyst by contemporaneous transmission from a laboratory facility via two-way closed-circuit or satellite-transmitted television which shall allow the examination and cross-examination of the analyst to proceed as though the analyst were testifying in the courtroom:

(1) After notice to the defendant;

(2) Upon proper showing of good cause and sufficient safeguards to satisfy all state and federal constitutional requirements of oath, confrontation, cross-examination, and observation of the witness's demeanor and testimony by the defendant, the court, and the jury; and

(3) Absent a showing of prejudice by the defendant.

History. Acts 1979, No. 864, § 18; A.S.A. 1947, § 42-1220; Acts 1989, No. 889, §§ 1, 2; 1999, No. 565, § 1; 2013, No. 297, § 1; 2019, No. 910, § 5848.

Amendments. The 2019 amendment substituted "Director of the State Crime Laboratory" for "Executive Director of the State Crime Laboratory" in (a).

RESEARCH REFERENCES

ALR. Application of Crawford Confrontation Clause Rule to Autopsy Testimony and Related Documents, 18 A.L.R.7th Art. 6 (2018).

12-12-315. Notification of certain deaths.

(a)(1) The county coroner, prosecuting attorney, and either the county sheriff or the chief of police of the municipality in which the death of a human being occurs shall be promptly notified by any physician, law enforcement officer, undertaker or embalmer, jailer, or coroner or by any other person present or with knowledge of the death if:

(A) The death appears to be caused by violence or appears to be the result of a homicide or a suicide or to be accidental;

(B) The death appears to be the result of the presence of drugs or poisons in the body;

(C) The death appears to be a result of a motor vehicle accident, or the body was found in or near a roadway or railroad;

(D) The death appears to be a result of a motor vehicle accident and there is no obvious trauma to the body;

(E) The death occurs while the person is in a state mental institution or hospital and there is no previous medical history to explain the death, or while the person is in police custody or jail other than a jail operated by the Division of Correction;

(F) The death appears to be the result of a fire or an explosion;

(G) The death of a minor child appears to indicate child abuse prior to death;

(H) Human skeletal remains are recovered or an unidentified deceased person is discovered;

(I) Postmortem decomposition exists to the extent that an external examination of the corpse cannot rule out injury, or in which the circumstances of death cannot rule out the commission of a crime;

(J) The death appears to be the result of drowning;

(K) The death is of an infant or a minor child under eighteen (18) years of age;

(L) The manner of death appears to be other than natural;

(M) The death is sudden and unexplained;

(N) The death occurs at a work site;

(O) The death is due to a criminal abortion;

(P) The death is of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or, in prediagnosed terminal or bedfast cases, within thirty (30) days;

(Q) A person is admitted to a hospital emergency room unconscious and is unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or, in cases in which the decedent had a

prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital;

(R) The death occurs in the home; or

(S)(i) The death poses a potential threat to public health or safety.

(ii) Upon receiving notice of a death that poses a potential threat to public health or safety, the county coroner shall immediately notify the Department of Health.

(2) Nothing in this section shall be construed to require an investigation, autopsy, or inquest in any case in which death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means in accordance with the tenets and practices of a well-recognized church or religious denomination.

(b) With regard to any death in a correctional facility, the county coroner and the State Medical Examiner shall be notified, and when previous medical history does not exist to explain the death, the Division of Arkansas State Police shall be notified.

(c) A violation of the provisions of this section is a Class A misdemeanor.

History. Acts 1969, No. 321, § 5; 1973, No. 509, § 1; 1979, No. 864, § 10; 1985, No. 216, § 1; A.S.A. 1947, §§ 42-615, 42-1212; Acts 1993, No. 1302, § 1; 1995, No. 311, § 2; 2001, No. 80, § 2; 2007, No. 194, § 1; 2007, No. 594, § 1; 2009, No. 165, § 3; 2009, No. 1286, § 1; 2019, No. 910, §§ 700, 701.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a)(1)(E); and substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (b).

12-12-316. Transportation of corpses.

(a) The State Crime Laboratory is authorized to transport bodies of persons whose death is subject to the provisions of this subchapter to an appropriate place for autopsy or for any other scientific tests.

(b)(1)(A) The bodies of such deceased persons shall be returned to the county from which they were brought by or at the expense of the laboratory only if the State Medical Examiner determines that the cause of death was not suicide, accidental, or from natural causes.

(B) In cases in which the examiner determines that the cause of death was suicide, accidental, or from natural causes, the expense of transporting and returning the bodies of such deceased persons shall be borne by whomever requests the laboratory to examine the cause of death, except for cases referred under the provisions of § 12-12-315(a)(2).

(C) A body may be transported when authorized by the prosecuting attorney, circuit court, county sheriff, or chief of police, or upon the request of the next of kin of the deceased or the persons who may be responsible for burial, to a place other than the county of origin.

(2) The laboratory shall not, however, be required to provide actual transportation or the cost of transportation in excess of what would be required to return the body to the county of origin.

(c) The laboratory shall provide transportation or shall bear the cost of transportation at the option of the Director of the State Crime Laboratory, but in no case shall the cost of transportation of dead bodies subject to the provisions of this subchapter be borne by the laboratory without the prior approval and authorization of the director or his or her staff.

History. Acts 1979, No. 864, § 13; A.S.A. 1947, § 42-1215; Acts 1993, No. 1063, § 1; 1993, No. 1246, § 1; 2019, No. 910, § 5849.

Amendments. The 2019 amendment,

in (c), substituted “Director of the State Crime Laboratory” for “Executive Director of the State Crime Laboratory” and “director” for “executive director”.

12-12-317. Death certificates.

(a) Except as provided under subsection (b) of this section, the certificate of death of a person whose death is investigated under this subchapter shall be made by the State Medical Examiner or by his or her designee or by the county coroner, whoever conducted the investigation.

(b) The examiner or his or her designee shall make and sign a certificate of death if:

(1)(A) The examiner or his or her designee performs a postmortem examination.

(B) The person who performs the postmortem examination shall make and sign the certificate of death; or

(2)(A) The certificate of death is for a person executed for a capital offense.

(B) The examiner or his or her designee shall list on the certificate of death of a person executed for a capital offense the:

(i) Manner of death as “Pursuant to a judicial sentence of death — Execution”; and

(ii) Cause of death as “electrocution” or “lethal injection”, as applicable.

(c) When a petition is filed with a court of competent jurisdiction to change the cause or manner of death listed on a certificate of death which has been signed by the examiner or by his or her designee, the State Crime Laboratory shall be notified of such petition, and the examiner or his or her designee shall be allowed to hear testimony presented by the petitioner and shall be given an opportunity to present evidence to the court to support the original ruling of the examiner or his or her designee who signed the certificate of death.

History. Acts 1979, No. 864, § 17; A.S.A. 1947, § 42-1219; Acts 1993, No. 177, § 1; 1995, No. 201, § 1; 2017, No. 417, § 1.

Amendments. The 2017 amendment, added “Except as provided under subsection (b) of this section” in (a); rewrote (b); in (c), substituted “certificate of death” for

“death certificate” following “listed”, substituted “designee” for “assistant” preceding “who signed”, and added “of death” at the end; and made stylistic changes.

12-12-318. Examinations, investigations, and postmortem examinations — Authorization and restrictions.

(a)(1) When death occurs in such a manner or under such circumstances as described in § 12-12-315, the State Crime Laboratory shall have the power and authority to perform such functions and duties as may be provided by this subchapter.

(2)(A) The laboratory shall make examinations, investigations, or perform postmortem examinations to determine the cause of death as the Director of the State Crime Laboratory or his or her staff deems necessary or as may be requested by the:

(i) County coroner of the county in which death occurs or is discovered;

(ii) Prosecuting attorney of the jurisdiction in which death occurs or is discovered;

(iii) County sheriff of the county in which death occurs or is discovered;

(iv) Chief of police of the city in which death occurs or is discovered;

(v) Board of Corrections or its designee, or the Director of the Division of Correction or his or her designee if the person was in the care, custody, or control of the Division of Correction at the time of death; or

(vi) Director of the Division of Arkansas State Police or his or her designee.

(B) Deputies of elected officers enumerated in subdivision (a)(2)(A) of this section shall have no authority to request a postmortem examination by the laboratory.

(b)(1) In cases of sudden death in children between the ages of one (1) year and six (6) years with no previous major medical health problems, the State Medical Examiner, on a case-by-case basis, may delegate authority to the Arkansas Children's Hospital to perform postmortem examinations to determine the cause of death.

(2)(A) Should any such postmortem examination determine that death occurred from foul play or a criminal act, the hospital will immediately notify the chief law enforcement officer of the jurisdiction in which the death occurred and the examiner.

(B) In addition, the examiner will be responsible for developing guidelines to assure that proper evidentiary procedures are followed.

(3) For purposes of this section, the hospital's staff pediatric pathologist, meeting the criteria prescribed in § 12-12-307, shall be considered assistant medical examiner and, notwithstanding any other provisions in this section, may perform postmortem examinations as directed by a duly constituted authority.

(c) Postmortem examinations or investigations authorized in this section may be conducted without consent of any person.

(d) The Director of the State Crime Laboratory and his or her staff shall not, as a part of their official duties, perform any postmortem examination at the request of any private citizen or any public official other than those enumerated in this section.

(e) The provisions of this section shall supersede any and all other laws relating to the power and authority of the Director of the State Crime Laboratory or his or her staff, including the examiner, to conduct examinations, investigations, or postmortem examinations.

(f)(1) The Director of the State Crime Laboratory shall have the final authority on any ruling of manner of death which may become a matter of dispute between those persons authorized by this section to request a post-mortem examination as described in § 12-12-315 and the examiner or his or her associates.

(2) The Director of the State Crime Laboratory shall use any and all material accumulated by the laboratory, interview all parties necessary, and consult with any medical authority necessary for him or her to make his or her decision as to the manner of death, and his or her ruling shall be final and binding as that ruling affects any documents generated and signed by any employee of the laboratory relating to manner of death.

(3) This subsection and the director's decision in no way affects or prohibits any person or agency to seek any other relief that may be available through legal channels.

History. Acts 1969, No. 321, § 6; 1973, No. 509, § 2; 1975, No. 736, § 1; 1979, No. 864, § 11; 1981, No. 65, § 1; 1985, No. 644, § 3; A.S.A. 1947, §§ 42-616, 42-1213; Acts 1993, No. 178, § 1; 1995, No. 1151, § 5; 1997, No. 422, § 1; 2019, No. 910, §§ 5850-5852.

Amendments. The 2019 amendment substituted "Director of the State Crime Laboratory" for "Executive Director of the

State Crime Laboratory" in the introductory language of (a)(2)(A); substituted "Division of Correction" for "Department of Correction" twice in (a)(2)(A)(v); substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a)(2)(A)(vi); and substituted "Director of the State Crime Laboratory" for "executive director" in (d), (e), (f)(1), and (f)(2).

12-12-319. Embalming corpse subject to examination, investigation, or autopsy — Penalty.

(a) It shall be unlawful to embalm a dead body when the body is subject to examination by the State Medical Examiner or his or her associates, assistants, or deputies as provided for in this subchapter, unless authorized by the examiner or his or her associates, assistants, or deputies or unless authorized by the prosecuting attorney of the jurisdiction in which the death occurs to so embalm.

(b) When a body subject to examination by the examiner or his or her associates has been embalmed without authorization by or prior notice to the examiner or his or her associates, assistants, or deputies as provided for in this subchapter, the Director of the State Crime Laboratory may, at his or her discretion, require an order from the circuit court of the jurisdiction in which death occurred before proceeding with his or her duties and responsibilities under this subchapter.

(c) Persons violating the provisions of this section shall be deemed guilty of a Class C misdemeanor.

History. Acts 1979, No. 864, § 14; substituted “Director of the State Crime Laboratory” for “Executive Director of the State Crime Laboratory” in (b).
A.S.A. 1947, § 42-1216; Acts 2019, No. 910, § 5853.

Amendments. The 2019 amendment

12-12-322. Hazardous duty pay.

(a)(1) The State Crime Laboratory is authorized to provide special compensation to certain employees for each full pay period of eighty (80) hours worked in a job which requires contact at crime scenes, emergency sites, or other sites where exposure to potentially hazardous substances is possible.

(2) It is recognized that many substances which may be encountered may create harmful health effects from either short-term or long-term exposure.

(3) This special pay is to compensate the employees for the increased risk of personal injury.

(4) The rate of pay will be one and one-half (1.5) times the regular authorized hourly pay or hourly rate of pay and will be paid only for the time while at the site of a clandestine laboratory.

(5) Payment will be controlled by the Director of the State Crime Laboratory.

(b) The rate of pay for individuals who work less than a full pay period of eighty (80) hours or transfer to other work areas not defined in subsection (a) of this section, or both, will not receive any enhanced rate of pay for that or subsequent pay periods.

(c) This section covers employees who respond to clandestine laboratory sites for the purpose of assisting and dismantling of such laboratory sites and is limited to those employees in the position of:

| | Class Code | Title |
|-----|---------------|------------------------------------------------------------------------------------------------------------------------|
| (1) | B048 | Chief Forensic Chemist; Crime Lab Instrumentation Engineer, when performing the duties of a Forensic Chemist; |
| (2) | Y023 | Forensic Chemist; and |
| (3) | B057 | |
| (4) | N336 | Latent Prints Examiner. |

(d) A monthly report shall be made to the Legislative Council describing all payments made to employees under the provisions of this section.

History. Acts 1995, No. 1151, § 4; substituted “Director of the State Crime Laboratory” for “Executive Director of the State Crime Laboratory” in (a)(5).
1997, No. 254, [§ 1]; 2019, No. 910, § 5854.

Amendments. The 2019 amendment

12-12-324. Testing by State Crime Laboratory.

(a) A firearm used in the commission of a crime that comes into the custody of a law enforcement agency in this state may be delivered to the State Crime Laboratory within thirty (30) calendar days for forensic testing for firearms meeting the caliber and type determined by the Director of the State Crime Laboratory.

(b)(1)(A) The laboratory may conduct forensic tests on all firearms received and input the resulting data into the National Integrated Ballistics Information Network of the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(B) The forensic tests may include without limitation firing of the firearm and electronic imaging of the bullets and casings.

(2) The laboratory shall coordinate with all participating agencies when investigations require the use of the National Integrated Ballistics Information Network computer database.

(3) The laboratory shall provide written analysis reports and experts for testimony when feasible.

(4) After completion of the forensic testing, the firearm shall be returned to the law enforcement agency that submitted the firearm for forensic testing.

(5) When the law enforcement agency regains possession of the firearm and after final adjudication, the law enforcement agency shall immediately notify the owner, unless the owner is prohibited by law from possessing the firearm, that the owner may regain possession of the firearm at the offices of the law enforcement agency.

(c) A law enforcement agency in this state may request the assistance of the Division of Arkansas State Police in tracing a firearm.

(d) A firearm seized by the Arkansas State Game and Fish Commission for violation of a commission rule is exempt from this section.

(e) The State Crime Laboratory Board may adopt rules for the implementation of this section, including without limitation rules regarding forensic testing of a firearm and procedures for submission of a firearm.

History. Acts 1999, No. 1558, §§ 1, 2; 2001, No. 788, § 1; 2005, No. 1257, § 1; 2019, No. 315, § 862; 2019, No. 910, § 5855; 2019, No. 1010, § 1.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (d).

The 2019 amendment by No. 910 substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (c).

The 2019 amendment by No. 1010 rewrote (a), (b), and (e).

12-12-326. Autopsies — Line-of-duty death — Definitions.

(a) As used in this section:

(1) “Eligible person” means a person with an eligibility similar to a firefighter or police officer under the Public Safety Officers’ Benefits Act of 1976 or the Hometown Heroes Survivors Benefits Act of 2003, 42 U.S.C. § 3796 et seq., as appropriate;

(2) "Firefighter" means any member of a fire department or fire fighting unit of the Arkansas Forestry Commission, any city of the first class or city of the second class, any town, or any unincorporated rural area of this state, who actively engages in the fighting of fires on either a regular or voluntary basis; and

(3) "Police officer" means any law enforcement officer engaged in official duty who is:

(A) A member of:

(i) Any regular or auxiliary police force on a full-time or part-time basis; or

(ii) The Division of Arkansas State Police; or

(B) A sheriff or deputy sheriff of any county.

(b) A coroner or a supervisor of a firefighter, police officer, or eligible person shall promptly notify the State Medical Examiner if the firefighter, police officer, or eligible person dies in the line of duty as a result of injuries sustained in the line of duty or within twenty-four (24) hours after participating in an emergency situation.

(c)(1)(A) The examiner may conduct an autopsy on any firefighter, police officer, or eligible person who dies in the line of duty as a result of injuries sustained in the line of duty or within twenty-four (24) hours after participating in an emergency situation.

(B) The autopsy shall be sufficient to determine eligibility for benefits under the Public Safety Officers' Benefits Act of 1976 or the Hometown Heroes Survivors Benefits Act of 2003, 42 U.S.C. § 3796 et seq., as appropriate.

(C) A report of the autopsy shall be provided to the firefighter's or police officer's commanding officer or the supervisor of the eligible person.

(2)(A) If the firefighter, police officer, or eligible person has agreed in writing to allow an autopsy under this section, that directive shall be followed unless the firefighter's, police officer's, or eligible person's spouse dictates otherwise after being notified of the prospective autopsy.

(B) If the firefighter, police officer, or eligible person has not agreed in writing to allow an autopsy under this section, the firefighter's, police officer's, or eligible person's spouse may decide whether or not an autopsy will be performed.

(C) If the firefighter's, police officer's, or eligible person's spouse chooses not to allow the autopsy:

(i) No autopsy may be performed; and

(ii) The body of the firefighter, police officer, or eligible person shall be released to the next of kin.

(3)(A) If the examiner does not perform an autopsy under this section, he or she shall provide to the firefighter's or police officer's commanding officer or the supervisor of the eligible person written notice stating the reason why an autopsy was not performed.

(B) The written notice under subdivision (c)(3)(A) of this section shall include a toxicology report.

History. Acts 2007, No. 69, § 1; 2009, No. 165, § 4; 2019, No. 910, § 5856.

Amendments. The 2019 amendment

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a)(3)(A)(ii).

SUBCHAPTER 4 — SEXUAL ASSAULT — MEDICAL-LEGAL EXAMINATIONS

SECTION.
12-12-402. Procedures governing medical treatment.
12-12-403. Examinations and treatment — Payment.
12-12-404. Reimbursement of medical facility — Rules.

SECTION.
12-12-406. Sexual assault collection kits
— Submission for testing
— Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-12-402. Procedures governing medical treatment.

- (a) All medical facilities or licensed healthcare providers conducting medical-legal examinations in Arkansas shall adhere to the procedures set forth in this section in the event that a person presents himself or herself or is presented for treatment as a victim of rape, attempted rape, any other type of sexual assault, or incest.
- (b)(1)(A) Any adult victim presented for medical treatment shall make the decision of whether or not the incident will be reported to a law enforcement agency.
- (B) No medical facility or licensed healthcare provider may require an adult victim to report the incident in order to receive medical treatment.
- (C)(i) Evidence will be collected only with the permission of the victim.
- (ii) However, permission shall not be required when the victim is unconscious, mentally incapable of consent, or intoxicated.
- (2)(A) Should an adult victim wish to report the incident to a law enforcement agency, the appropriate law enforcement agencies shall be contacted by the medical facility or licensed healthcare provider or the victim’s designee.
- (B)(i) The victim shall be given a medical screening examination by a qualified medical person as provided under the Emergency

Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, as in effect on January 1, 2001, if the victim arrives at the emergency department of a hospital, and the person shall be examined and treated and any injuries requiring medical attention will be treated in the standard manner.

(ii) A medical-legal examination shall be conducted and specimens shall be collected for evidence.

(C) If a law enforcement agency has been contacted and with the permission of the victim, the evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(c)(1) Any victim under eighteen (18) years of age shall be examined and treated, and any injuries requiring medical attention shall be treated in the standard manner.

(2) A medical-legal examination shall be performed, and specimens shall be collected for evidence.

(3) The reporting medical facility or licensed healthcare provider shall follow the procedures set forth in Subchapter 4 of the Child Maltreatment Act, § 12-18-101 et seq., regarding the reporting of injuries to victims under eighteen (18) years of age.

(4) The evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(d) Reimbursement for the medical-legal examinations shall be available to the medical facility or licensed healthcare provider pursuant to the procedures set forth in § 12-12-403.

(e) A medical facility or licensed healthcare provider shall not transfer the victim to another medical facility unless:

(1) The victim or a parent or guardian of a victim under eighteen (18) years of age requests the transfer, or a physician or other qualified medical personnel when a physician is not available has signed a certification that the benefits to the victim's health would outweigh the risks to the victim's health as a result of the transfer; and

(2) The transferring medical facility or licensed healthcare provider provides all necessary medical records and ensures that appropriate transportation is available.

History. Acts 1985, No. 400, §§ 1, 2; 1985, No. 838, §§ 1, 2; A.S.A. 1947, §§ 41-1828, 41-1829; Acts 1991, No. 612, § 2; 2001, No. 993, § 2; 2009, No. 758, § 23; 2017, No. 250, § 4; 2017, No. 845, § 3.

Amendments. The 2017 amendment by No. 250 redesignated (e)(1)(A) and (B) as (e)(1); substituted "victim's health" for "patient's health" twice in (e)(1); and substituted "healthcare" for "health care" in (e)(2).

The 2017 amendment by No. 845 substituted "A medical facility or licensed healthcare provider shall not transfer the victim" for "The victim shall not be transferred" in the introductory language of (e); redesignated (e)(1)(A) and (B) as (e)(1); substituted "victim's health" for "patient's health" twice in (e)(1); and substituted "healthcare" for "health care" in (e)(2).

12-12-403. Examinations and treatment — Payment.

(a) All licensed emergency departments shall provide prompt, appropriate emergency medical-legal examinations for sexual assault victims.

(b)(1)(A) All victims shall be exempted from the payment of expenses incurred as a result of receiving a medical-legal examination if the victim receives the medical-legal examination within ninety-six (96) hours of the attack.

(B) However, the time limitation of ninety-six (96) hours may be waived if the victim is a minor or if the Crime Victims Reparations Board finds that good cause exists for the failure to provide the medical-legal examination within the required time.

(2)(A) This subsection does not require a victim of sexual assault to participate in the criminal justice system or to cooperate with law enforcement in order to be provided with a forensic medical exam or reimbursement for charges incurred on account of a forensic medical exam, or both.

(B) Subdivision (b)(2)(A) of this section does not preclude a report of suspected abuse or neglect as permitted or required by the Child Maltreatment Act, § 12-18-101 et seq.

(c)(1) A medical facility or licensed healthcare provider that performs a medical-legal examination shall submit a sexual assault reimbursement form, an itemized statement that meets the requirements of 45 C.F.R. § 164.512(d), as it existed on January 2, 2001, directly to the board for payment.

(2) The medical facility or licensed healthcare provider shall not submit any remaining balance after reimbursement by the board to the victim.

(3) Acceptance of payment of the expenses of the medical-legal examination by the board shall be considered payment in full and bars any legal action for collection.

History. Acts 1983, No. 403, §§ 4, 5; A.S.A. 1947, §§ 41-1823, 41-1824; Acts 1991, No. 396, § 8; 2001, No. 993, § 3; 2007, No. 676, § 4; 2009, No. 758, § 24; 2017, No. 920, § 1.

Amendments. The 2017 amendment, in (b)(1)(A), substituted “if the victim re-

ceives” for “provided the victim must receive” and “ninety-six (96)” for “seventy-two (72)” preceding “hours”; and, in (b)(1)(B), substituted “time limitation of ninety-six (96) hours” for “seventy-two-hour time limitation” and “medical-legal examination” for “exam”.

12-12-404. Reimbursement of medical facility — Rules.

(a) The Crime Victims Reparations Board may reimburse any medical facility or licensed healthcare provider that provides the services outlined in this subchapter for the reasonable cost for such services.

(b) The board is empowered to prescribe minimum standards and rules necessary to implement this subchapter. These shall include, but not be limited to, a cost ceiling for each claim and the determination of reasonable cost.

History. Acts 1983, No. 403, § 6; A.S.A. 1947, § 41-1825; Acts 1991, No. 396, § 1; 2001, No. 993, § 4; 2019, No. 315, § 863. substituted “standards and rules” for “standards, rules, and regulations” in the first sentence of (b).

Amendments. The 2019 amendment

12-12-406. Sexual assault collection kits — Submission for testing — Definitions.

(a) As used in this section:

(1) “Anonymous kit” means a sexual assault collection kit that is collected from a possible victim of a sexual assault who has not decided whether to report the sexual assault to a law enforcement agency;

(2) “Healthcare provider” means a person or facility that provides a medical-legal examination;

(3) “Law enforcement agency” means a police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal laws, traffic laws, or highway laws of this state;

(4) “Medical-legal examination” means health care delivered to a possible victim of a sexual assault, with an emphasis on the gathering and preserving of evidence for the purpose of serving criminal justice;

(5) “Sexual assault” means an offense described in § 5-14-101 et seq. or § 5-26-202; and

(6) “Sexual assault collection kit” means a human biological specimen or specimens collected during a medical-legal examination from the alleged victim of a sexual assault.

(b)(1) A healthcare provider that has collected required victim information as part of a medical-legal examination shall enter the required victim information into a sexual assault collection kit tracking system of the State Crime Laboratory before transferring the sexual assault collection kit to a law enforcement agency with jurisdiction.

(2) The system described in subdivision (b)(1) of this section shall provide secure electronic access that allows a law enforcement agency, a healthcare provider, the laboratory, and a victim to access tracking information.

(3) A sexual assault collection kit collected by a healthcare provider shall be taken into custody by a law enforcement agency as soon as possible and within three (3) business days of notice from the healthcare provider.

(c)(1) A law enforcement agency that receives a sexual assault collection kit from a healthcare provider shall enter all necessary information into the system described in subdivision (b)(1) of this section.

(2) A law enforcement agency that receives a sexual assault collection kit from a healthcare provider that relates to a report of a sexual assault that occurred outside of the jurisdiction of the law enforcement agency shall have the sexual assault collection kit delivered to the law enforcement agency having jurisdiction within ten (10) days of learning that the other law enforcement agency has jurisdiction.

(d) A sexual assault collection kit shall be submitted to the laboratory by the receiving law enforcement agency as soon as possible, but no later than fifteen (15) days after receipt of the sexual assault collection kit.

(e)(1) A law enforcement agency is not required to submit an anonymous kit to the laboratory if the victim does not affirmatively request submission.

(2) If a victim chooses to provide a personal statement about the sexual assault to a law enforcement agency at any time after initially declining to provide a personal statement, the anonymous kit shall be delivered to the laboratory as soon as possible, but no later than fifteen (15) days after the victim chooses to provide a personal statement to the law enforcement agency.

(f) If available, a suspect standard or a consensual partner elimination standard shall be submitted to the laboratory:

(1) With the sexual assault collection kit, if available, at the time the sexual assault collection kit is submitted; or

(2) As soon as possible, but no later than fifteen (15) days from the date the sexual assault collection kit was obtained by the law enforcement agency, if the suspect standard or consensual partner elimination standard is not obtained until after the sexual assault collection kit is submitted.

(g)(1) Starting July 1, 2019, the laboratory shall test all sexual assault collection kits that are received from a law enforcement agency with the goal of developing autosomal DNA profiles that are eligible for entry into the Combined DNA Index System.

(2) Sexual assault collection kits shall be tested by the laboratory and the tests completed within sixty (60) days of receipt from the law enforcement agency.

(3) The ability of the laboratory to complete all tests within sixty (60) days of receipt may be dependent upon the following factors:

(A) The number of sexual assault collection kits that the laboratory receives;

(B) The technology and improved testing methods available;

(C) The establishment of a fully trained and dedicated staff to meet the caseload; and

(D) The number of lab requests received relating to other crime categories.

(4) Failure to meet a deadline established under this subsection or administrative rule is not a basis for dismissal of a criminal action or a bar to the admissibility of the evidence in a criminal action.

History. Acts 2019, No. 839, § 1.

SUBCHAPTER 6 — KNIFE AND GUNSHOT WOUND REPORTING

12-12-602. Report of treatment required.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Breanna Trombley, Note: Criminal Law — No Stitches for Snitches: The Need for a Duty-to-Report Law in Arkansas, 34 U. Ark. Little Rock L. Rev. 813 (2012).

SUBCHAPTER 9 — SEX OFFENDER REGISTRATION ACT OF 1997

SECTION.

- 12-12-903. Definitions.
- 12-12-904. Failure to comply with registration and reporting requirements — Refusal to cooperate with assessment process.
- 12-12-906. Duty to register or verify registration generally — Review of requirements with offenders.
- 12-12-907. Report to Arkansas Crime Information Center — Report to law enforcement agency.
- 12-12-908. Registration format — Requirements.
- 12-12-909. Verification form — Change of address.
- 12-12-911. Sex and Child Offenders Registration Fund.

SECTION.

- 12-12-912. Arrests for violations.
- 12-12-913. Disclosure.
- 12-12-914. Notice of release.
- 12-12-915. Authority — Rules.
- 12-12-917. Evaluation protocol — Sexually dangerous persons — Juveniles adjudicated delinquent — Examiners.
- 12-12-918. Classification as sexually dangerous person.
- 12-12-919. Termination of obligation to register.
- 12-12-925. Travel outside of the United States.
- 12-12-928. Prohibition against recording a person under 14 years of age — Notification.
- 12-12-929. Registered offender prohibited from holding position of public trust — Definition.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-12-903. Definitions.

As used in this subchapter:

- (1) “Adjudication of guilt” or other words of similar import mean a:
 - (A) Plea of guilty;

- (B) Plea of nolo contendere;
- (C) Negotiated plea;
- (D) Finding of guilt by a judge; or
- (E) Finding of guilt by a jury;

(2)(A) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(B) "Administration of criminal justice" also includes criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(3) "Aggravated sex offense" means an offense in the Arkansas Code substantially equivalent to "aggravated sexual abuse" as defined in 18 U.S.C. § 2241 as it existed on March 1, 2003, which principally encompasses:

(A) Causing another person to engage in a sexual act:

- (i) By using force against that other person; or
- (ii) By threatening or placing or attempting to threaten or place that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

(B) Knowingly:

(i) Rendering another person unconscious and then engaging in a sexual act with that other person; or

(ii) Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or similar substance and thereby:

(a) Substantially impairing the ability of that other person to appraise or control conduct; and

(b) Engaging or attempting to engage in a sexual act with that other person; or

(C) Crossing a state line with intent to:

(i) Engage or attempt to engage in a sexual act with a person who has not attained twelve (12) years of age;

(ii) Knowingly engage or attempt to engage in a sexual act with another person who has not attained twelve (12) years of age; or

(iii) Knowingly engage or attempt to engage in a sexual act under the circumstances described in subdivisions (3)(A) and (B) of this section with another person who has attained twelve (12) years of age but has not attained sixteen (16) years of age and is at least four (4) years younger than the alleged offender;

(4) "Change of address" or other words of similar import mean a change of residence or a change for more than thirty (30) days of temporary domicile, change of location of employment, education or training, or any other change that alters where a sex offender regularly spends a substantial amount of time;

(5) "Criminal justice agency" means a government agency or any subunit thereof which is authorized by law to perform the administration of criminal justice and which allocates more than one-half (½) of its annual budget to the administration of criminal justice;

(6) "Local law enforcement agency having jurisdiction" means the:

(A) Chief law enforcement officer of the municipality in which a sex offender:

(i) Resides or expects to reside;

(ii) Is employed; or

(iii) Is attending an institution of training or education; or

(B) County sheriff, if:

(i) The municipality does not have a chief law enforcement officer;

or

(ii) A sex offender resides or expects to reside, is employed, or is attending an institution of training or education in an unincorporated area of a county;

(7) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminally sexual acts to a degree that makes the person a menace to the health and safety of other persons;

(8) "Personality disorder" means an enduring pattern of inner experience and behavior that:

(A) Deviates markedly from the expectation of the person's culture;

(B) Is pervasive and inflexible across a broad range of personal and social situations;

(C) Leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning;

(D) Is stable over time;

(E) Has its onset in adolescence or early adulthood;

(F) Is not better accounted for as a manifestation or consequence of another mental disorder; and

(G) Is not due to the direct physiological effects of a substance or a general medical condition;

(9) "Predatory" describes an act directed at a stranger or a person with whom a relationship has been established or promoted for the primary purpose of victimization of that person or individuals over whom that person has control;

(10)(A) "Residency" means the place where a person lives notwithstanding that there may be an intent to move or return at some future date to another place.

(B) "Residency" also includes:

(i) A place of employment;

(ii) A place of training;

(iii) A place of education; or

(iv) A temporary residence or domicile in which a person resides for an aggregate of five (5) or more consecutive days during a calendar year;

(11) "Sentencing court" means the judge of the court that sentenced the sex offender for the sex offense;

(12)(A) "Sex offender" means a person who is adjudicated guilty of a sex offense or acquitted on the grounds of mental disease or defect of a sex offense.

(B) Unless otherwise specified, "sex offender" includes those individuals classified by the court as a sexually dangerous person;

(13)(A) "Sex offense" includes, but is not limited to:

(i) The following offenses:

(a) Rape, § 5-14-103;

(b) Sexual indecency with a child, § 5-14-110;

(c) Sexual assault in the first degree, § 5-14-124;

(d) Sexual assault in the second degree, § 5-14-125;

(e) Sexual assault in the third degree, § 5-14-126;

(f) Sexual assault in the fourth degree, § 5-14-127;

(g) Incest, § 5-26-202;

(h) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(i) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(j) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;

(k) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(l) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(m) Promoting prostitution in the first degree, § 5-70-104;

(n) Stalking, § 5-71-229, when ordered by the sentencing court to register as a sex offender;

(o) Indecent exposure, § 5-14-112, if a felony level offense;

(p) Exposing another person to human immunodeficiency virus, § 5-14-123, when ordered by the sentencing court to register as a sex offender;

(q) Kidnapping pursuant to § 5-11-102(a), when the victim is a minor and the offender is not the parent of the victim;

(r) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the victim is a minor and the offender is not the parent of the victim;

(s) Permitting abuse of a minor, § 5-27-221, if the abuse of the minor consisted of sexual intercourse, deviant sexual activity, or sexual contact;

(t) Computer child pornography, § 5-27-603;

(u) Computer exploitation of a child, § 5-27-605;

(v) Permanent detention or restraint, § 5-11-106, when the offender is not the parent of the victim;

(w) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child, § 5-27-602;

(x) Internet stalking of a child, § 5-27-306;

(y) Crime of video voyeurism, § 5-16-101, if a felony level offense;

(z) Voyeurism, § 5-16-102, if a felony level offense;

(aa) Any felony-homicide offense under § 5-10-101, § 5-10-102, or § 5-10-104 if the underlying felony is an offense listed in this subdivision (13)(A)(i);

(bb) Sexually grooming a child, § 5-27-307;

(cc) Trafficking of persons under § 5-18-103(a)(4);

(dd) Patronizing a victim of human trafficking, § 5-18-104; and

(ee) Sexual extortion, § 5-14-113;

(ii) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in subdivision (13)(A)(i) of this section;

(iii) An adjudication of guilt for an offense of the law of another state:

(a) Which is similar to any of the offenses enumerated in subdivision (13)(A)(i) of this section; or

(b) When that adjudication of guilt requires registration under another state's sex offender registration laws;

(iv) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (13)(A);

(v) An adjudication of guilt for an offense in any federal court, the District of Columbia, a United States territory, a federally recognized Indian tribe, or for a military offense:

(1) Which is similar to any of the offenses enumerated in subdivision (13)(A)(i) of this section;

(2) When the adjudication of guilt requires registration under sex offender registration laws of another state or jurisdiction; or

(3) If the conviction was for a violation of:

(a) 18 U.S.C. § 2252C;

(b) 18 U.S.C. § 2424; or

(c) 18 U.S.C. § 2425; or

(vi) An adjudication of guilt for an offense requiring registration under the laws of Canada, the United Kingdom, Australia, New Zealand, or any other foreign country where an independent judiciary enforces a right to a fair trial during the year in which the conviction occurred.

(B)(i) The sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in subdivision (13)(A)(i) of this section.

(ii) This authority applies to sex offenses enacted, renamed, or amended at a later date by the General Assembly unless the General Assembly expresses its intent not to consider the offense to be a true sex offense for the purposes of this subchapter;

(14)(A) "Sexually dangerous person" means a person who has been adjudicated guilty or acquitted on the grounds of mental disease or defect of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(B) A person previously classified as a sexually violent predator is now considered a sexually dangerous person;

(15) “Sexually violent offense” means any state, federal, tribal, or military offense which includes a sexual act as defined in 18 U.S.C. §§ 2241 and 2242 as they existed on March 1, 2003, with another person if the offense is nonconsensual regardless of the age of the victim;

(16)(A) “Social media account” means a personal account with an electronic medium or service in which a user may create, share, or access user-generated content, including without limitation:

- (i) A video;
- (ii) A photograph;
- (iii) A blog post;
- (iv) A podcast;
- (v) A transmission or message; or
- (vi) An email.

(B) “Social media account” includes without limitation an account established with:

- (i) Facebook;
- (ii) Twitter;
- (iii) LinkedIn;
- (iv) MySpace;
- (v) Instagram;
- (vi) Snapchat;
- (vii) YouTube; or
- (viii) Any other similar format, program, application, or internet service; and

(17) “Social media account information” means information concerning a social media account, including without limitation:

- (A) A screen name;
- (B) A user identification; or
- (C) A user name.

History. Acts 1997, No. 989, § 3; 1999, No. 1353, § 1; 2001, No. 1496, § 3; 2001, No. 1743, § 2; 2003, No. 1390, § 4; 2003 (2nd Ex. Sess.), No. 21, §§ 1-3; 2007, No. 210, § 1; 2007, No. 394, § 2; 2009, No. 165, § 6; 2013, No. 172, § 1; 2013, No. 505, §§ 1, 2; 2013, No. 508, § 1; 2013, No. 1114, § 3; 2015, No. 357, § 1; 2015, No.

1285, § 1; 2017, No. 664, § 7; 2017, No. 916, § 1.

Amendments. The 2017 amendment by No. 664 added (13)(A)(i)(ee).

The 2017 amendment by No. 916 added (16) (“Social media account”) and (17) (“Social media account information”).

CASE NOTES

ANALYSIS

Aggravated Sex Offense.
Change of Address.
Sex Offense.

Aggravated Sex Offense.

Defendant’s second-degree sexual abuse conviction under former § 5-14-109 did

not require defendant’s lifetime sex offender registration; the crime was not substantially equivalent to aggravated sexual abuse under 18 U.S.C. § 2241, since second-degree sexual abuse did not require the use of force and required only sexual contact, while aggravated sexual abuse under the federal statute required a sexual act, as defined in 18 U.S.C.

§ 2246(2)(D). *Myers v. State*, 2017 Ark. App. 617, 535 S.W.3d 301 (2017).

Change of Address.

Evidence was sufficient to convict defendant of failure to comply with registration requirements under the Sex Offender Registration Act based on his failure to report a change of address because defendant, who registered as a homeless resident of Marion County, was required to wear an electronic ankle monitor with a GPS tracking system; with the use of the GPS technology, the State introduced documentation that defendant had not been in his usual overnight location in Marion County, or any other location in Marion County, for a period of 13 consecutive days; and, contrary to defendant's argument, the evidence established more

than a mere temporary relocation to Boone County to periodically recharge his electronic ankle monitor. *Wilson v. State*, 2016 Ark. App. 164, 485 S.W.3d 698 (2016).

Sex Offense.

Under subdivision (13)(A)(iii) of this section, once the State showed that defendant had been convicted of a sex offense requiring him to register as a sex offender in North Carolina, the State did not also have to show that the North Carolina offenses were similar to offenses requiring registration in Arkansas in order to support a conviction for failure to register; the statute reads in the disjunctive. *Martin v. State*, 2018 Ark. App. 143, 545 S.W.3d 785 (2018).

12-12-904. Failure to comply with registration and reporting requirements — Refusal to cooperate with assessment process.

(a)(1)(A) A person is guilty of a Class C felony who:

(i) Fails to register or verify registration as required under this subchapter;

(ii) Fails to report in person a change of address, employment, education, or training as required under this subchapter;

(iii) Refuses to cooperate with the assessment process as required under this subchapter; or

(iv) Files false paperwork or documentation regarding verification, change of information, or petitions to be removed from the Arkansas Sex Offender Registry.

(B)(i) Upon conviction, a sex offender who fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2) is guilty of a Class C felony.

(ii) If a sex offender fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2), as soon as administratively feasible the Division of Correction, the Division of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall contact the local law enforcement agency having jurisdiction to report the violation of subdivision (a)(1)(B)(i) of this section.

(2) It is an affirmative defense to prosecution if the person:

(A) Delayed reporting a change in address because of:

(i) An eviction;

(ii) A natural disaster; or

(iii) Any other unforeseen circumstance; and

(B) Provided the new address to the local law enforcement agency having jurisdiction in person no later than five (5) business days after the person establishes residency.

(b) Any agency or official subject to reporting requirements under this subchapter that knowingly fails to comply with the reporting requirements under this subchapter is guilty of a Class B misdemeanor.

History. Acts 1997, No. 989, § 11; 1999, No. 1353, § 2; 2001, No. 1743, § 3; 2006 (1st Ex. Sess.), No. 4, § 1; 2007, No. 394, § 3; 2013, No. 172, § 2; 2015, No. 358, § 1; 2017, No. 916, § 2; 2019, No. 910, § 702.

Amendments. The 2017 amendment inserted “in person” in (a)(1)(A)(ii); and

substituted “in person” for “in writing” in (a)(2)(B).

The 2019 amendment, in (a)(1)(B)(ii), substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction”.

CASE NOTES

Evidence.

Evidence was sufficient to convict defendant of failure to comply with registration requirements under the Sex Offender Registration Act based on his failure to report a change of address because defendant, who registered as a homeless resident of Marion County, was required to wear an electronic ankle monitor with a GPS tracking system; with the use of the GPS technology, the State introduced

documentation that defendant had not been in his usual overnight location in Marion County, or any other location in Marion County, for a period of 13 consecutive days; and, contrary to defendant’s argument, the evidence established more than a mere temporary relocation to Boone County to periodically recharge his electronic ankle monitor. *Wilson v. State*, 2016 Ark. App. 164, 485 S.W.3d 698 (2016).

12-12-905. Applicability.

CASE NOTES

In General.

Circuit court properly denied defendant’s motion to dismiss related to his conviction under § 12-12-904 for failure to comply with sex offender reporting requirements where defendant, who had been convicted of rape in 1993 and was imprisoned before the Sex Offender Registration Act of 1997 was enacted, argued that the 1993 order did not impose a registration requirement, as required by § 12-12-906. Defendant was found guilty of committing a registerable sex offense, he was in prison on August 1, 1997, which according to this section and judicial interpretation, meant that the registration

and verification requirements applied to him, and there was no legislative directive to apply the § 12-12-906 requirement retroactively. *Williams v. State*, 2017 Ark. App. 526, 532 S.W.3d 614 (2017).

Trial court, upon resentencing, properly ordered defendant to register as a sex offender because, by pleading guilty to distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child, defendant was ineligible for any sentence under the First Offender Act and was required by law to comply with the statutory sex-offender-registration requirements. *Wilson v. State*, 2019 Ark. App. 116 (2019).

12-12-906. Duty to register or verify registration generally — Review of requirements with offenders.

(a)(1)(A)(i) At the time of adjudication of guilt, the sentencing court shall enter on the judgment and commitment or judgment and disposition form that the offender is required to register as a sex offender and shall indicate whether the:

(a) Offense is an aggravated sex offense;
(b) Sex offender has been adjudicated guilty of a prior sex offense under a separate case number; or

(c) Sex offender has been classified as a sexually dangerous person.

(ii) If the sentencing court finds the offender is required to register as a sex offender, then at the time of adjudication of guilt the sentencing court shall require the sex offender to complete the sex offender registration form prepared by the Director of the Arkansas Crime Information Center pursuant to § 12-12-908 and shall forward the completed sex offender registration form to the Arkansas Crime Information Center.

(iii) A sex offender is not required to register as a sex offender under this subchapter if the:

(a) Victim was under eighteen (18) years of age and the sex offender was no more than three (3) years older than the victim at the time of the sex offense;

(b) Court determines that there was no evidence of force, compulsion, threat, or intimidation in the commission of the sex offense; and

(c) Court does not otherwise order registration under § 12-12-903(13)(B)(i).

(B)(i) The Division of Correction shall ensure that a sex offender received for incarceration has completed the sex offender registration form.

(ii) If the Division of Correction cannot confirm that the sex offender has completed the sex offender registration form, the Division of Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(C)(i) The Division of Community Correction shall ensure that a sex offender placed on probation or another form of community supervision has completed the sex offender registration form.

(ii) If the Division of Community Correction cannot confirm that the sex offender has completed the sex offender registration form, the Division of Community Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(D)(i) The Arkansas State Hospital shall ensure that the sex offender registration form has been completed for any sex offender found not guilty by reason of insanity and shall arrange an evaluation by Community Notification Assessment.

(ii) If the Arkansas State Hospital cannot confirm that the sex offender has completed the sex offender registration form, the Arkansas State Hospital shall ensure that the sex offender registration form is completed for the sex offender upon intake, release, or discharge.

(2)(A) A sex offender who moves to or returns to this state from another jurisdiction and who would be required to register as a sex offender in the jurisdiction in which he or she was adjudicated guilty or delinquent of a sex offense shall register with the local law

enforcement agency having jurisdiction in person within five (5) calendar days after the sex offender moves to a municipality or county of this state.

(B)(i) Any person living in this state who would be required to register as a sex offender in the jurisdiction in which he or she was adjudicated guilty or delinquent of a sex offense shall register as a sex offender in this state whether living, working, or attending school or other training in Arkansas.

(ii) A nonresident worker or student who enters the state shall register in compliance with the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, as it existed on January 1, 2007.

(C) A sex offender sentenced and required to register outside of Arkansas shall:

(i)(a) Submit to assessment by Community Notification Assessment if he or she is at least eighteen (18) years of age at the time he or she enters this state to live, work, or attend school.

(b) If he or she is under eighteen (18) years of age at the time he or she enters this state to live, work, or attend school, he or she shall submit to assessment by the University of Arkansas for Medical Sciences Family Treatment Program or other agency or entity authorized to conduct juvenile sex offender assessments;

(ii) Provide a deoxyribonucleic acid (DNA) sample if a sample is not already accessible to the State Crime Laboratory; and

(iii)(a) Pay the mandatory fee of two hundred fifty dollars (\$250) to be deposited into the DNA Detection Fund established by § 12-12-1119 within ninety (90) days from the date of registration.

(b) Failure to pay the fee required under subdivision (a)(2)(C)(iii)(a) of this section is a Class A misdemeanor.

(b)(1) The registration file of a sex offender who is confined in a correctional facility or serving a commitment following acquittal on the grounds of mental disease or defect shall be inactive until the registration file is updated by the department responsible for supervision of the sex offender.

(2) Immediately prior to the release or discharge of a sex offender or immediately following a sex offender's escape or his or her absconding from supervision, the Division of Correction, the Division of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall update the registration file of the sex offender who is to be released or discharged or who has escaped or has absconded from supervision.

(c)(1)(A) When registering a sex offender as provided in subsection (a) of this section, the sentencing court, the Division of Correction, the Division of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall:

(i) Inform the sex offender of the duty to submit to assessment and to register and obtain the information required for registration as described in § 12-12-908;

(ii) Inform the sex offender that if the sex offender changes residency within the state, the sex offender shall give the new address and place of employment, education, higher education, or training to the center in writing no later than five (5) calendar days before the sex offender establishes residency or is temporarily domiciled at the new address;

(iii)(a) Inform the sex offender that if the sex offender changes residency to another state or enters another state to work or attend school, the sex offender must also register in that state regardless of permanent residency.

(b) The sex offender shall register the new address and place of employment, education, higher education, or training with the center and with a designated law enforcement agency in the new state in person not later than five (5) calendar days after the sex offender establishes residency or is temporarily domiciled in the new state;

(iv) Obtain fingerprints, palm prints, and a photograph of the sex offender if these have not already been obtained in connection with the offense that triggered registration;

(v) Obtain a deoxyribonucleic acid (DNA) sample if one has not already been provided;

(vi) Require the sex offender to complete the entire registration process, including, but not limited to, requiring the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been explained;

(vii) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the local law enforcement agency having jurisdiction in person no later than five (5) calendar days after the sex offender establishes residency;

(viii) Inform a sex offender who has been granted probation that failure to comply with the provisions of this subchapter may be grounds for revocation of the sex offender's probation; and

(ix) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(a) Verify registration and obtain the information required for registration verification as described in subsections (g) and (h) of this section; and

(b) Ensure that the information required for reregistration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction.

(B)(i) Any offender required to register as a sex offender must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registering if a sample has not already been provided to the State Crime Laboratory.

(ii) Any offender required to register as a sex offender who is entering the State of Arkansas must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon

registration and must pay the mandatory fee of two hundred fifty dollars (\$250) to be deposited into the DNA Detection Fund established by § 12-12-1119.

(2) When updating the registration file of a sex offender, the Division of Correction, the Division of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall:

(A) Review with the sex offender the duty to register and obtain current information required for registration as described in § 12-12-908;

(B) Review with the sex offender the requirement that if the sex offender changes address within the state, the sex offender shall give the new address to the local law enforcement agency having jurisdiction in person no later than five (5) calendar days before the sex offender establishes residency or is temporarily domiciled at the new address;

(C) Review with the sex offender the requirement that if the sex offender changes address to another state, the sex offender shall register the new address with the local law enforcement agency having jurisdiction in person and with a designated law enforcement agency in the new state in person not later than five (5) calendar days after the sex offender establishes residency or is temporarily domiciled in the new state if the new state has a registration requirement;

(D) Require the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been reviewed;

(E) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the local law enforcement agency having jurisdiction in person no later than five (5) calendar days after the sex offender establishes residency;

(F) Review with the sex offender the consequences of failure to provide any information required by subdivision (b)(2) of this section;

(G) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(i) Verify registration and report the information required for registration verification as described in subsections (g) and (h) of this section; and

(ii) Ensure that the information required for registration verification under subsections (g) and (h) of this section is provided in person to the local law enforcement agency having jurisdiction; and

(H) Review with a sex offender subject to lifetime registration under § 12-12-919 the consequences of failure to verify registration under § 12-12-904.

(d) When registering or updating the registration file of a sexually dangerous person, in addition to the requirements of subdivision (c)(1) or subdivision (c)(2) of this section, the sentencing court, the Division of Correction, the Division of Community Correction, the Arkansas State

Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall obtain documentation of any treatment received for the mental abnormality or personality disorder of the sexually dangerous person.

(e) Any sex offender working, enrolled, or volunteering in a public or private elementary, secondary or postsecondary school, or institution of training shall notify the local law enforcement agency having jurisdiction in person of that status and shall register in person with the local law enforcement agency having jurisdiction over that campus.

(f)(1) A sex offender required to register under this subchapter shall not change his or her name unless the change is:

(A) Incident to a change in the marital status of the sex offender;
or

(B) Necessary to effect the exercise of the religion of the sex offender.

(2) The change in the sex offender's name shall be reported to the local law enforcement agency having jurisdiction in person within five (5) calendar days after the change in name.

(3) A violation of this subsection is a Class C felony.

(g)(1) Except as provided in subsection (h) of this section, a sex offender subject to lifetime registration under § 12-12-919 shall report in person every six (6) months after registration to the local law enforcement agency having jurisdiction to verify registration.

(2)(A) The local law enforcement agency having jurisdiction may determine the appropriate times and days for in-person reporting by the sex offender, and the determination shall be consistent with the reporting requirements of subdivision (g)(1) of this section.

(B)(i) If the day a sex offender is scheduled to report under this section passes before the day a local law enforcement agency having jurisdiction has determined as appropriate, the sex offender shall not be considered out of compliance if he or she reports at the next date set by the local law enforcement agency having jurisdiction.

(ii) If a local law enforcement agency having jurisdiction sets specific times and days for reporting then the local law enforcement agency having jurisdiction shall have the appropriate staff available at those times and days for a sex offender to report under this section.

(3) Registration verification shall include reporting in person any change to the following information concerning the sex offender:

- (A) Name;
- (B) Social Security number;
- (C) Age;
- (D) Race;
- (E) Gender;
- (F) Date of birth;
- (G) Height;
- (H) Weight;
- (I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment or volunteer work;

(L) Vehicle make, model, color, and license tag number that the sex offender owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sex offender's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sex offender's fingerprints in person at an office of the local law enforcement agency having jurisdiction; and

(b) Submit the fingerprints to the center and to the Division of Arkansas State Police.

(iii) If the local law enforcement agency having jurisdiction cannot confirm that the sex offender's palm prints are contained in the automated palm print identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sex offender's palm prints in person at an office of the local law enforcement agency having jurisdiction; and

(b) Submit the palm prints to the center and to the Division of Arkansas State Police;

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sex offender at each registration verification in person at an office of the local law enforcement agency having jurisdiction and submit the photograph to the center;

(O) All computers or other devices with internet capability to which the sex offender has access;

(P) All email addresses used by the sex offender;

(Q)(i) Passport.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any passport issued to the person by any country in the sex offender's name in person at an office of the local law enforcement agency having jurisdiction at each registration verification and submit the copy of any passport to the center;

(R)(i) Immigration documentation.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any immigration documents issued to the sex offender by any country in person at an office of the local law enforcement agency having jurisdiction at each registration verification and submit a copy of the documents to the center;

(S)(i) Professional licenses and permits.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any federal, state, or local professional license or

permit issued to the sex offender in person at an office of the local law enforcement agency having jurisdiction at each registration verification and submit a copy of the documents to the center; and

(T) All social media account information.

(4) If the sex offender is enrolled or employed at an institution of higher education in this state, the sex offender shall also report in person to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution of higher education where he or she is enrolled or employed, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sex offender is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sex offender shall report in person the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sex offender is a vessel, live-aboard vessel, or houseboat, the sex offender shall report in person the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

(7) If a person who is required to register as a sex offender owns an aircraft, the person shall provide in person the following information concerning the aircraft:

(A) The aircraft registration number;

(B) The manufacturer and model of the aircraft; and

(C) A description of the color scheme of the aircraft.

(h)(1) A sexually dangerous person subject to lifetime registration under § 12-12-919 shall report in person every ninety (90) days after registration to the local law enforcement agency having jurisdiction to verify registration.

(2)(A) The local law enforcement agency having jurisdiction may determine the appropriate times and days for in-person reporting by the sexually dangerous person, and the determination shall be consistent with the reporting requirements of subdivision (h)(1) of this section.

(B)(i) If the day a sex offender is scheduled to report under this section passes before the day a local law enforcement agency having jurisdiction has determined as appropriate, the sex offender shall not

be considered out of compliance if he or she reports at the next date set by the local law enforcement agency having jurisdiction.

(ii) If a local law enforcement agency having jurisdiction sets specific times and days for reporting then the local law enforcement agency having jurisdiction shall have the appropriate staff available at those times and days for a sex offender to report under this section.

(3) Registration verification shall include reporting in person any change to the following information concerning the sexually dangerous person:

- (A) Name;
- (B) Social Security number;
- (C) Age;
- (D) Race;
- (E) Gender;
- (F) Date of birth;
- (G) Height;
- (H) Weight;
- (I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment or volunteer work;

(L) Vehicle make, model, color, and license tag number that the sexually dangerous person owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sexually dangerous person's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sexually dangerous person's fingerprints in person at an office of the law enforcement agency having jurisdiction; and

(b) Submit the fingerprints to the center and to the Division of Arkansas State Police.

(iii) If the local law enforcement agency having jurisdiction cannot confirm that the sexually dangerous person's palm prints are contained in the automated palm print identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sexually dangerous person's palm prints in person at an office of the law enforcement agency having jurisdiction; and

(b) Submit the palm prints to the center and to the Division of Arkansas State Police;

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sexually dangerous person at each registration verification in person at an office of the law enforcement agency having jurisdiction and submit the photograph to the center;

(O) All computers or other devices with internet capability to which the sex offender has access;

(P) All email addresses used by the sex offender;

(Q)(i) Passport.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any passport issued to the sexually dangerous person by any country in the sexually dangerous person's name in person at an office of the law enforcement agency having jurisdiction at each registration verification and submit the copy of any passport to the center;

(R)(i) Immigration documentation.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any immigration documents issued to the sexually dangerous person by any country in person at an office of the law enforcement agency having jurisdiction at each registration verification and submit a copy of the documents to the center;

(S)(i) Professional licenses and permits.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any federal, state, or local professional license or permit issued to the sexually dangerous person in person at an office of the law enforcement agency having jurisdiction at each registration verification and submit a copy of the documents to the center; and

(T) All social media account information.

(4) If the sexually dangerous person is enrolled or employed at an institution of higher education in this state, the sexually dangerous person shall also report in person to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution of higher education where he or she is enrolled or employed, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sexually dangerous person is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sexually dangerous person shall report in person the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sexually dangerous person is a vessel, live-aboard vessel, or houseboat, the sexually dangerous person shall report in person the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

- (C) Name;
- (D) Registration number; and
- (E) A description, including color scheme.

(7) If a sexually dangerous person who is required to register as a sexually dangerous person owns an aircraft, the sexually dangerous person shall report in person the following information concerning the aircraft:

- (A) The aircraft registration number;
- (B) The manufacturer and model of the aircraft; and
- (C) A description of the color scheme of the aircraft.

(i) After verifying the registration of a sex offender under subsection (g) of this section or a sexually dangerous person under subsection (h) of this section, the local law enforcement agency having jurisdiction shall file the verification with the center in accordance with § 12-12-909.

History. Acts 1997, No. 989, § 5; 1999, No. 1353, § 4; 2001, No. 202, §§ 1-3; 2001, No. 1089, § 1; 2001, No. 1743, § 5; 2003, No. 1185, § 18; 2003, No. 1265, § 4[3]; 2003 (2nd Ex. Sess.), No. 21, § 4; 2005, No. 1962, § 34; 2006 (1st Ex. Sess.), No. 4, § 3; 2007, No. 394, § 5; 2011, No. 143, §§ 1, 2; 2011, No. 1009, § 1; 2013, No. 172, § 3; 2013, No. 505, §§ 3-7; 2013, No. 508, §§ 2-8; 2013, No. 1129, §§ 2, 3; 2015, No. 358, §§ 2-7; 2017, No. 916, § 3; 2019, No. 262, §§ 1-3; 2019, No. 587, § 1; 2019, No. 910, §§ 703-711.

Amendments. The 2017 amendment inserted “in person” and “in-person” throughout the section except in (h)(1); substituted “in person” for “in writing” in (c)(1)(A)(vii), (c)(2)(B), and (c)(2)(E); inserted “in person at an office of the law enforcement agency having jurisdiction” throughout (g); redesignated former (g)(2) as (g)(2)(A); added (g)(2)(B); deleted former (g)(3)(Q); redesignated former (g)(3)(R)-(T) as (g)(3)(Q)-(S); added present (g)(3)(T); inserted “in person at an office of the law enforcement agency” throughout (h); redesignated former (h)(2)

as (h)(2)(A); added (h)(2)(B); deleted former (h)(3)(Q); redesignated former (h)(3)(R)-(T) as (h)(3)(Q)-(S); added present (h)(3)(T); substituted “sexually dangerous person shall report in person” for “person shall provide” in (h)(7); and made a stylistic change.

The 2019 amendment by No. 262 substituted “five (5) calendar days” for “seven (7) calendar days” in (a)(2)(A); rewrote (c)(1) and (c)(2); and substituted “five (5) calendar days” for “ten (10) calendar days” in (f)(2).

The 2019 amendment by No. 587 added (a)(1)(A)(iii).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction”, “Division of Community Correction” for “Department of Community Correction”, and “Division of Arkansas State Police” for “Department of Arkansas State Police” throughout the section.

U.S. Code. The Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, referred to in this section, is codified in part as 42 U.S.C. § 16901 et seq.

CASE NOTES

Requirement to Register.

Circuit court properly denied defendant’s motion to dismiss related to his conviction under § 12-12-904 for failure to comply with sex offender reporting requirements where defendant, who had been convicted of rape in 1993 and was imprisoned before the Sex Offender Reg-

istration Act of 1997 was enacted, argued that the 1993 order did not impose a registration requirement, as required by this section. Defendant was found guilty of committing a registerable sex offense, he was in prison on August 1, 1997, which according to § 12-12-905 and judicial interpretation, meant that the registration

and verification requirements applied to him, and there was no legislative directive to apply the requirement in this section retroactively. *Williams v. State*, 2017 Ark. App. 526, 532 S.W.3d 614 (2017).

Sufficient evidence existed to support defendant's conviction for failing to register as a sex offender after he failed to verify his address. Defendant had been convicted of sex offenses requiring him to register in North Carolina, which under § 12-12-903(13)(A)(iii) required him to register and verify his information in Arkansas; further, by signing an acknowledgement form that he was required to register, he had agreed to appear in per-

son on a date certain to verify his information, but failed to do so. *Martin v. State*, 2018 Ark. App. 143, 545 S.W.3d 785 (2018).

Under § 12-12-903(13)(A)(iii), once the State showed that defendant had been convicted of a sex offense requiring him to register as a sex offender in North Carolina, the State did not also have to show that the North Carolina offenses were similar to offenses requiring registration in Arkansas in order to support a conviction for failure to register; the statute reads in the disjunctive. *Martin v. State*, 2018 Ark. App. 143, 545 S.W.3d 785 (2018).

12-12-907. Report to Arkansas Crime Information Center — Report to law enforcement agency.

(a)(1) Within three (3) days after registering or updating the registration file of a sex offender, the Division of Correction, the Division of Community Correction, the Department of Human Services, the sentencing court, or the local law enforcement agency having jurisdiction shall report, by electronic means, all information obtained from the sex offender and regarding the sex offender to the Arkansas Crime Information Center.

(2) The center shall immediately enter the information into its record system for maintenance in a central registry and notify the local law enforcement agency having jurisdiction.

(3) The center will share information with the National Sex Offender Public Website.

(b)(1)(A) No later than five (5) calendar days after release from incarceration or after the date of sentencing, a sex offender shall report in person to the local law enforcement agency having jurisdiction and update the information in the registration file.

(B) If the sex offender is not already registered, the local law enforcement agency having jurisdiction shall register the sex offender in accordance with this subchapter.

(2) Within three (3) days after registering a sex offender or receiving updated registry information on a sex offender, the local law enforcement agency having jurisdiction shall report, by electronic means, all information obtained from the sex offender to the center.

(3) The local law enforcement agency having jurisdiction shall verify the address of a sexually dangerous person on a quarterly basis and the address of all other sex offenders on a semiannual basis.

(4) The center shall have access to the offender tracking systems of the Division of Correction and the Division of Community Correction to confirm the location of registrants.

History. Acts 1997, No. 989, § 6; 1999, No. 1353, § 5; 2001, No. 1743, § 6; 2013, No. 505, § 8; 2013, No. 508, § 9; 2015, No. 358, § 8; 2017, No. 916, § 4; 2019, No. 262, §§ 4-6; 2019, No. 910, §§ 712, 713.

Amendments. The 2017 amendment inserted “in person” in (b)(1)(A).

The 2019 amendment by No. 262 deleted “written or” preceding “electronic” in

(a)(1) and (b)(2); and substituted “five (5) calendar days” for “ten (10) days” in (b)(1)(A).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction” in (a)(1) and (b)(4).

12-12-908. Registration format — Requirements.

(a) The Director of the Arkansas Crime Information Center shall prepare the format for registration as required in subsection (b) of this section and shall provide instructions for registration to each organized full-time municipal police department, county sheriff’s office, the Division of Correction, the Division of Community Correction, the Department of Human Services, and the Administrative Office of the Courts.

(b) The registration file required by this subchapter shall include:

(1) The sex offender’s full name and all aliases that the sex offender has used or under which the sex offender has been known;

(2) Date of birth;

(3) Sex;

(4) Race;

(5) Height;

(6) Weight;

(7) Hair and eye color;

(8) Address of any temporary residence;

(9) Anticipated address of legal residence;

(10) Driver’s license number or state identification number, if available;

(11) Social Security number;

(12) Place of employment, education, or training;

(13) Photograph, if not already obtained;

(14) Fingerprints, if not already obtained;

(15) Date of arrest, arresting agency, offense for which convicted or acquitted, and arrest tracking number for each adjudication of guilt or acquittal on the grounds of mental disease or defect;

(16) A brief description of the crime or crimes for which registration is required;

(17) The registration status of the sex offender as a sexually dangerous person, aggravated sex offender, or sex offender;

(18) A statement in writing signed by the sex offender acknowledging that the sex offender has been advised of the duty to register imposed by this subchapter;

(19) All computers or other devices with internet capability to which the sex offender has access;

(20) All email addresses used by the sex offender;

(21) Any other information that the center deems necessary, including without limitation:

- (A) Criminal and corrections records;
 - (B) Nonprivileged personnel records;
 - (C) Treatment and abuse registry records; and
 - (D) Evidentiary genetic markers; and
- (22) All social media account information.

(c) Certain information such as Social Security number, driver's license number, employer, email addresses, user names, screen names, or instant message names, information that may lead to identification of the victim, and other similar information may be excluded from the information that is released during the course of notification.

History. Acts 1997, No. 989, § 7; 1999, No. 1353, § 6; 2001, No. 1743, § 7; 2011, No. 143, § 1[3]; 2013, No. 505, § 9; 2017, No. 916, § 5; 2019, No. 910, § 714.

Amendments. The 2017 amendment deleted former (b)(21); redesignated former (b)(22) as (b)(21); and added present (b)(22).

The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (a).

12-12-909. Verification form — Change of address.

(a)(1) A sex offender required to register under this subchapter shall verify registration in person every six (6) months after the sex offender's initial registration date during the period of time in which the sex offender is required to register.

(2)(A)(i) The verification shall be done in person at a local law enforcement agency having jurisdiction at which time the sex offender shall sign and date a Sex Offender Acknowledgment Form and a law enforcement officer shall also witness and sign the Sex Offender Acknowledgment Form.

(ii) The Sex Offender Acknowledgment Form shall state the date of verification as well as a date that the sex offender is required to return in person to a specific local law enforcement agency having jurisdiction to verify his or her address.

(B) The Sex Offender Acknowledgement Form shall be uniform and created by the Arkansas Crime Information Center.

(C) The local law enforcement agency having jurisdiction shall file the verification of registration electronically with the center through a system provided by the center.

(3) If the sex offender changes his or her address without notice, notification shall be sent to law enforcement and supervising parole or probation authorities, and notice may be posted on the internet until proper reporting is again established or the sex offender is incarcerated.

(4) Subdivision (a)(1) of this section applies to a sex offender required to register as a sexually dangerous person, except that the sexually dangerous person shall verify the registration in person every ninety (90) days after the date of the initial release or commencement of parole.

(5) Subdivision (a)(1) of this section applies to a sex offender required to register under this subchapter who claims to be homeless except that

a sex offender claiming to be homeless shall verify the registration in person every thirty (30) days during the period of time in which the sex offender is required to register under this subchapter and claims to be homeless.

(b)(1)(A) Before a change of address within the state, a sex offender shall report the change of address to the local law enforcement agency having jurisdiction in person no later than five (5) calendar days before the sex offender establishes residency or is temporarily domiciled at the new address.

(B) The sex offender shall report to the local law enforcement agency having jurisdiction of the new address in person within five (5) calendar days after relocating to the new address.

(C) Upon receipt of a report of a change of address as described in subdivision (b)(1)(A) of this section, the local law enforcement agency having jurisdiction shall report the change of address to the center.

(D) Other than a change of address as provided in subdivision (b)(1)(A) of this section, a sex offender shall report a change of any other information required to be reported at registration under § 12-12-908 or required to be reported at the time of verification under § 12-12-906 to the local law enforcement agency having jurisdiction in person within five (5) calendar days of the change.

(2) When a change of address within the state is reported to the center, the center shall immediately report the change of address to the local law enforcement agency having jurisdiction where the sex offender expects to reside.

(c)(1) Before a change of address to another state, a sex offender shall register the new address with the local law enforcement agency having jurisdiction in person and with a designated law enforcement agency in the state to which the sex offender moves in person not later than five (5) calendar days before the sex offender establishes residency or is temporarily domiciled in the new state if the new state has a registration requirement.

(2) When a change of address to another state is reported to the center, the center shall immediately notify the law enforcement agency with which the sex offender must register in the new state if the new state has a registration requirement.

(d) The center shall require a sex offender to report any change of information through the local law enforcement agency having jurisdiction.

History. Acts 1997, No. 989, § 8; 2001, No. 1743, § 8; 2007, No. 394, § 6; 2011, No. 64, § 1; 2013, No. 505, § 10; 2015, No. 358, § 9; 2017, No. 916, § 6; 2019, No. 262, §§ 7-10.

Amendments. The 2017 amendment substituted “sex offender” for “person” and “person’s” throughout (a); in (a)(1), substituted “under this subchapter” for “as a sex offender” and inserted “in person”; in

(a)(2)(A)(i), substituted “and” for “in which” preceding “a law enforcement officer” and inserted “the Sex Offender Acknowledgment Form”; deleted “certain” following “date” in (a)(2)(A)(ii); inserted “in person” in (a)(3)(D), (a)(5), and (a)(6); inserted the second occurrence of “sexually dangerous” in (a)(5); in (a)(6), substituted “under this subchapter” for “as a sex offender” twice and deleted “a person re-

quired to register as" following "homeless except that"; and inserted "in person" throughout (b) and (c).

The 2019 amendment added "through a system provided by the center" in (a)(2)(C); deleted former (a)(3) through (a)(6) and redesignated the remaining subdivisions accordingly; deleted "or fails

to return the verification form if he or she is allowed to do so by mail" following "without notice" in (a)(3); substituted "five (5) calendar days" for "ten (10) days" in (b)(1)(A), (b)(1)(D), and (c)(1); substituted "five (5) calendar days" for "three (3) days" in (b)(1)(B); and substituted "residency" for "residence" in (c)(1).

12-12-911. Sex and Child Offenders Registration Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Sex and Child Offenders Registration Fund".

(b)(1) This fund shall consist of special revenues collected pursuant to § 12-12-910, there to be used equally by the Arkansas Crime Information Center and the Division of Correction for the administration of this subchapter.

(2) Any unexpended balance of this fund shall be carried forward and made available for the same purpose.

History. Acts 1997, No. 989, § 10; 1999, No. 1353, § 7; 2003 (2nd Ex. Sess.), No. 21, § 5; 2019, No. 910, § 715.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (b)(1).

12-12-912. Arrests for violations.

(a) In order for a sex offender to be charged with the commission of a violation of this subchapter so that an arrest warrant may be issued, the local law enforcement agency having jurisdiction shall notify the prosecutor when the local law enforcement agency having jurisdiction has reasonable grounds for believing that a sex offender is not registered, has not reported a change of address or change of any other information required to be provided by the sex offender, or has not verified the sex offender's address in violation of this subchapter.

(b) The address of a sex offender as listed in the sex offender's registration file shall determine which local law enforcement agency has jurisdiction.

(c) A law enforcement officer shall arrest a sex offender when a warrant has been issued for the sex offender's arrest, the law enforcement officer has probable cause to believe that a sex offender has committed an offense under this subchapter, or the law enforcement officer has reasonable grounds for believing that a sex offender is not registered or has not reported a change of address or change of any other information required to be provided by the sex offender in violation of this subchapter.

History. Acts 1997, No. 989, § 12; 2001, No. 1743, § 9; 2015, No. 358, § 10; 2017, No. 916, § 7.

Amendments. The 2017 amendment,

in (c), inserted "the law enforcement officer has probable cause to believe that a sex offender has committed an offense under this subchapter" and "law enforce-

ment" following "or the".

12-12-913. Disclosure.

(a)(1) Registration records maintained pursuant to this subchapter shall be open to any criminal justice agency in this state, the United States, or any other state.

(2) Registration records may also be open to government agencies authorized by law to conduct confidential background checks.

(3) Registration records shall be open to the Division of Medical Services of the Department of Human Services for Medicaid provider applicants under § 12-12-927.

(b) In accordance with guidelines promulgated by the Sex Offender Assessment Committee, local law enforcement agencies having jurisdiction shall disclose relevant and necessary information regarding sex offenders to the public when the disclosure of such information is necessary for public protection.

(c)(1)(A) The Sex Offender Assessment Committee shall promulgate guidelines and procedures for the disclosure of relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection.

(B) In developing the guidelines and procedures, the Sex Offender Assessment Committee shall consult with persons who, by experience or training, have a personal interest or professional expertise in law enforcement, crime prevention, victim advocacy, criminology, psychology, parole, public education, and community relations.

(2)(A) The guidelines and procedures shall identify factors relevant to a sex offender's future dangerousness and likelihood of reoffense or threat to the community.

(B) The guidelines and procedures shall also address the extent of the information to be disclosed and the scope of the community to whom disclosure shall be made as these factors relate to the:

- (i) Level of the sex offender's dangerousness;
- (ii) Sex offender's pattern of offending behavior; and
- (iii) Need of community members for information to enhance their individual and collective safety.

(3) The Sex Offender Assessment Committee shall submit the proposed guidelines and procedures to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor for their review and shall report to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor every six (6) months on the implementation of this section.

(d)(1) A local law enforcement agency having jurisdiction that decides to disclose information pursuant to this section shall make a good faith effort to notify the public and residents at least fourteen (14) days before a sex offender is released or placed into the community.

(2) If a change occurs in a sex offender's release plan, this notification provision shall not require an extension of the release date.

(3) In conjunction with the notice provided under § 12-12-914, the Division of Correction and the Department of Human Services shall make available to a local law enforcement agency having jurisdiction all information that the Division of Correction and the Department of Human Services have concerning the sex offender, including information on risk factors in the sex offender's history.

(e)(1) A local law enforcement agency having jurisdiction that decides to disclose information under this section shall make a good faith effort to conceal the identity of the victim or victims of the sex offender's offense.

(2) Except as provided in subsection (j) of this section, information under this section is not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(f) A local law enforcement agency having jurisdiction may continue to disclose information on a sex offender under this section for as long as the sex offender is required to be registered under this subchapter.

(g)(1) The State Board of Education and the Career Education and Workforce Development Board shall promulgate guidelines for the disclosure to students and parents of information regarding a sex offender when such information is released to a local school district or institution of vocational training by a local law enforcement agency having jurisdiction.

(2) The Arkansas Higher Education Coordinating Board shall promulgate guidelines for the disclosure to students of information regarding a sex offender when information regarding a sex offender is released to an institution of higher education by a local law enforcement agency having jurisdiction.

(3) In accordance with guidelines promulgated by the State Board of Education, the board of directors of a local school district or institution of vocational training shall adopt a written policy regarding the distribution to students and parents of information regarding a sex offender.

(4) In accordance with guidelines promulgated by the Arkansas Higher Education Coordinating Board, the board of directors of an institution of higher education shall adopt a written policy regarding the distribution to students of information regarding a sex offender.

(h) Nothing in this section shall prevent a law enforcement officer from notifying members of the public about a person who may pose a danger to the public for a reason that is not enumerated in this subchapter.

(i) The medical records or treatment evaluations of a sex offender or sexually dangerous person are not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(j)(1)(A) The following information concerning a sex offender registered under this subchapter who is classified as a Level 3 or Level 4 offender by the Community Notification Assessment shall be made public:

(i) The sex offender's complete name, as well as any alias;

- (ii) The sex offender's date of birth;
 - (iii) Any sex offense to which the sex offender has pleaded guilty or nolo contendere or of which the sex offender has been found guilty by a court of competent jurisdiction;
 - (iv) The street name and block number, county, city, and zip code where the sex offender resides;
 - (v) The sex offender's race and gender;
 - (vi) The date of the last address verification of the sex offender provided to the Arkansas Crime Information Center;
 - (vii) The most recent photograph of the sex offender that has been submitted to the center;
 - (viii) The sex offender's parole or probation office;
 - (ix) The street name and block number, county, city, and zip code where the sex offender is employed;
 - (x) Any institution of higher education in which the sex offender is enrolled;
 - (xi) The vehicle identification number and license plate number of any vehicle the sex offender owns or operates; and
 - (xii) A physical description of the sex offender.
- (B) If a sex offender registered under this subchapter was eighteen (18) years of age or older at the time of the commission of the sex offense that required registration under this subchapter and the victim of the sex offense was fourteen (14) years of age or younger and the sex offender is classified as a Level 2 offender by the Community Notification Assessment, the following information concerning the registered sex offender shall be made public:
- (i) The sex offender's complete name, as well as any alias;
 - (ii) The sex offender's date of birth;
 - (iii) Any sex offense to which the sex offender has pleaded guilty or nolo contendere or of which the sex offender has been found guilty by a court of competent jurisdiction;
 - (iv) The street name and block number, county, city, and zip code where the sex offender resides;
 - (v) The sex offender's race and gender;
 - (vi) The date of the last address verification of the sex offender provided to the center;
 - (vii) The most recent photograph of the sex offender that has been submitted to the center;
 - (viii) The sex offender's parole or probation office;
 - (ix) The street name and block number, county, city, and zip code where the sex offender is employed;
 - (x) Any institution of higher education in which the sex offender is enrolled;
 - (xi) The vehicle identification number and license plate number of any vehicle the sex offender owns or operates; and
 - (xii) A physical description of the sex offender.
- (C) The center shall prepare and place the information described in subdivisions (j)(1)(A) and (B) of this section on the internet home page of the State of Arkansas.

(2) The center may promulgate any rules necessary to implement and administer this subsection.

(k) This subchapter shall not be interpreted to prohibit the posting on the internet or by other appropriate means of offender fact sheets or the physical description of the sex offender for those sex offenders who are determined to be:

(1) High-risk or sexually dangerous persons, risk Level 3 and Level 4; or

(2) In noncompliance with the requirements of registration under rules promulgated by the Sex Offender Assessment Committee.

History. Acts 1997, No. 989, § 13; 1999, No. 1353, § 8; 2001, No. 1743, § 10; 2003, No. 330, §§ 1, 2; 2003 (2nd Ex. Sess.), No. 21, § 6; 2005, No. 1962, § 35; 2007, No. 147, § 1; 2007, No. 394, § 7; 2009, No. 165, § 7; 2013, No. 505, §§ 11–14; 2013, No. 508, §§ 10, 11; 2013, No. 1504, § 1; 2017, No. 916, §§ 8, 9; 2019, No. 315, § 864; 2019, No. 910, § 716.

Amendments. The 2017 amendment substituted “a sex offender registered under this subchapter” for “a registered sex offender” in the introductory language of (j)(1)(A) and the introductory language of

(j)(1)(B); added (j)(1)(A)(xii); deleted “registered” preceding “sex offender” and “sex offender’s” in the introductory language of (j)(1)(B) and throughout (j)(1)(B)(i) through (j)(1)(B)(viii); added (j)(1)(B)(xii); and, in (k), substituted “This subchapter shall not” for “Nothing in this subchapter shall” and inserted “or the physical description of the sex offender”.

The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (k)(2).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” twice in (d)(3).

12-12-914. Notice of release.

(a)(1) The Division of Correction shall provide notice by written or electronic means to the Arkansas Crime Information Center of the anticipated release from incarceration in a county or state penal institution of a person serving a sentence for a sex offense.

(2) The Department of Human Services shall provide notice by written or electronic means to the center of the anticipated release from incarceration of a person committed following an acquittal on the grounds of mental disease or defect for a sex offense.

(b)(1)(A) If available, the notice required in subsection (a) of this section shall be provided to the center ninety (90) days before the offender’s anticipated release.

(B) However, a good faith effort shall be made to provide the notice at least thirty (30) days before release.

(2) The notice shall include the person’s name, identifying factors, offense history, and anticipated future residence.

(c) Upon receipt of notice, the center shall provide notice by written or electronic means to:

(1) The local law enforcement agency having jurisdiction; and

(2) Other state and local law enforcement agencies as appropriate for public safety.

(d)(1) Where possible, victim notification pursuant to this subchapter shall be accomplished by means of the computerized victim notification system established under § 12-12-1201 et seq.

(2) If notification cannot be made throughout the system established under § 12-12-1201 et seq., the Division of Correction shall provide the notification to the victim.

History. Acts 1997, No. 989, § 14; substituted “Division of Correction” for 1999, No. 1353, § 9; 2001, No. 1743, § 11; “Department of Correction” in (a)(1) and 2019, No. 910, §§ 717, 718. (d)(2).

Amendments. The 2019 amendment

12-12-915. Authority — Rules.

(a) The Division of Correction, the Division of Community Correction, the Department of Human Services, the Administrative Office of the Courts, and the Arkansas Crime Information Center shall promulgate rules to establish procedures for:

(1) Notifying the sex offender of the obligation to register pursuant to this subchapter; and

(2) Registering the sex offender.

(b)(1) The Division of Community Correction shall monitor an adult sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

(2) The Department of Human Services shall monitor an adult or juvenile sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

(c)(1) The Division of Community Correction shall promulgate rules to establish procedures for monitoring an adult sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

(2) The Department of Human Services shall promulgate rules to establish procedures for monitoring an adult or juvenile sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

History. Acts 1997, No. 989, § 15; 2003 (2nd Ex. Sess.), No. 21, § 7; 2006 (1st Ex. Sess.), No. 4, § 4; 2007, No. 394, § 8; 2019, No. 910, § 719.

Amendments. The 2019 amendment substituted “Division of Correction” for

“Department of Correction” in the introductory language of (a); and substituted “Division of Community Correction” for “Department of Community Correction” in the introductory language of (a), and in (b)(1) and (c)(1).

12-12-917. Evaluation protocol — Sexually dangerous persons — Juveniles adjudicated delinquent — Examiners.

(a)(1) The Sex Offender Assessment Committee shall develop an evaluation protocol for preparing reports to assist courts in making determinations whether or not a person adjudicated guilty of a sex offense should be considered a sexually dangerous person for purposes of this subchapter.

(2) The committee shall also establish qualifications for examiners and qualify examiners to prepare reports in accordance with the evaluation protocol.

(b)(1) The committee shall cause an assessment to be conducted on a case-by-case basis of the public risk posed by a sex offender or sexually dangerous person:

(A) Who is required to register under § 12-12-905 after August 1, 1997; and

(B) For whom the Arkansas Crime Information Center has no record of an assessment's being done and a risk level established subsequent to August 1, 1997.

(2)(A)(i) An adult offender convicted of an offense described in 42 U.S.C. § 14071 et seq., as it existed on March 1, 2003, Pub. L. No. 109-248, as it existed on January 1, 2007, or § 12-12-903(13) shall be assessed.

(ii)(a) Subject to subdivision (c)(1) of this section, the prosecuting attorney and any law enforcement agency shall furnish the file relating to the offender to Community Notification Assessment at the Division of Correction within thirty (30) days of an offender's adjudication of guilt.

(b)(1) The prosecuting attorney shall make a copy of any relevant records concerning the offender and shall forward the copied relevant records to Community Notification Assessment within thirty (30) days of the adjudication.

(2) The relevant records include, but are not limited to:

(A) Arrest reports;

(B) Incident reports;

(C) Offender statements;

(D) Judgment and disposition forms;

(E) Medical records;

(F) Witness statements; and

(G) Any record considered relevant by the prosecuting attorney.

(B) A sex offender sentenced to life, life without parole, or death shall be assessed only if the sex offender is being considered for release.

(3) A sex offender currently in the state who has not been assessed and classified shall be identified by the center.

(4)(A) If a sex offender fails to appear for assessment, is aggressive, threatening, or disruptive to the point that Community Notification Assessment staff cannot proceed with the assessment process, or voluntarily terminates the assessment process after having been advised of the potential consequences:

(i) The sex offender shall be classified as a risk Level 3 or referred to the Sex Offender Assessment Committee as a risk Level 4; and

(ii) The parole or probation officer, if applicable, shall be notified.

(B) A sex offender has immunity for a statement made by him or her in the course of assessment with respect to prior conduct under the immunity provisions of § 16-43-601 et seq.

(C) Assessment personnel shall report ongoing child maltreatment as required under the Child Maltreatment Act, § 12-18-101 et seq.

(c)(1) To the extent permissible and under the procedures established by state rules and federal regulations, public agencies shall

provide the committee access to all relevant records and information in the possession of public agencies or any private entity contracting with a public agency relating to the sex offender or sexually dangerous person under review.

(2) The records and information include, but are not limited to:

- (A) Police reports;
- (B) Statements of probable cause;
- (C) Presentence investigations and reports;
- (D) Complete judgments and sentences;
- (E) Current classification referrals;
- (F) Criminal history summaries;
- (G) Violation and disciplinary reports;
- (H) All psychological evaluations and psychiatric hospital reports;
- (I) Sex offender or sexually dangerous person treatment program reports;

(J) Juvenile court records;

(K) Victim impact statements;

(L) Investigation reports to the Child Abuse Hotline, the Division of Children and Family Services of the Department of Human Services, and any entity contracting with the Department of Human Services for investigation or treatment of sexual or physical abuse or domestic violence; and

(M) Statements of medical providers treating victims of sex offenses indicating the extent of injury to the victim.

(d)(1) Records and information obtained under this section shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., unless otherwise authorized by law.

(2)(A)(i) The sex offender or sexually dangerous person shall have access to records and information generated and maintained by the committee.

(ii) These records shall include any reports of the assessment and the tape of the interview but do not include restricted source documents of commercial psychological tests or working notes of staff.

(B)(i) Unless otherwise ordered by a court of competent jurisdiction, records and information generated by other agencies and obtained under this section shall not be available to the sex offender or sexually dangerous person except through the agency or individual having primary custody of the records.

(ii) Upon request, the sex offender shall be given a list of the records or information obtained.

(C) If the record or information generated contains the address of a victim or a person who has made a statement adverse to the sex offender or sexually dangerous person, the address shall be redacted and the sex offender or sexually dangerous person shall have access to records and information other than the identity and address.

(e) In classifying the sex offender into a risk level for the purposes of public notification under § 12-12-913, the committee, through its staff,

shall review each sex offender or sexually dangerous person under its authority:

(1) Prior to the sex offender's release for confinement in a correctional facility;

(2) Prior to the release of a person who has been committed following an acquittal on the grounds of mental disease or defect;

(3) At the start of a sex offender's suspended imposition of sentence; or

(4) At the start of a sex offender's probation period.

(f)(1)(A) The committee shall issue the offender fact sheet to the local law enforcement agency having jurisdiction.

(B) The offender fact sheet is provided to assist the local law enforcement agency having jurisdiction in its task of community notification.

(2) The committee shall provide the Parole Board with copies of the offender fact sheet on inmates of the Division of Correction.

(3) The committee shall provide the Division of Community Correction with copies of the offender fact sheet on any sex offender under the Division of Community Correction's supervision.

(4)(A)(i) The offender fact sheet shall be prepared on a standard form for ease of transmission and communication.

(ii) The offender fact sheet shall be on an internet-based application accessible to law enforcement, state boards, and licensing agencies.

(iii) The offender fact sheet of a sexually dangerous person or a sex offender found by the center to be in violation of the registration requirement shall be made available to the general public unless the release of the offender fact sheet, in the opinion of the committee based on a risk assessment, places an innocent individual at risk.

(B) The standard form shall include, but not be limited to:

(i) Registration information as required in § 12-12-908;

(ii) Risk level;

(iii) Date of deoxyribonucleic acid (DNA) sample;

(iv) Psychological factors likely to affect sexual control;

(v) Victim age and gender preference;

(vi) Treatment history and recommendations; and

(vii) Other relevant information deemed necessary by the committee or by professional staff performing sex offender assessments.

(5)(A) The committee shall ensure that the notice is complete in its entirety.

(B) A law enforcement officer shall notify the center if a sex offender has moved or is otherwise in violation of a registration requirement.

(6)(A) All material used in the assessment shall be kept on file in its original form for one (1) year.

(B) After one (1) year the file may be stored electronically.

(g)(1) In cooperation with the committee, the Division of Correction shall promulgate rules to establish the review process for assessment determinations.

(2)(A) The sex offender or sexually dangerous person may request an administrative review of the assigned risk level under the conditions stated and following the procedures indicated under § 12-12-922.

(B) The sex offender shall be notified of these rights and procedures in the documentation sent with the notification of risk level.

(h)(1)(A) A sex offender or sexually dangerous person may request the committee to reassess the assigned risk level of the sex offender or sexually dangerous person after five (5) years have elapsed since initial risk assessment by the committee and may renew that request one (1) time every five (5) years.

(B) In the request for reassessment, the sex offender or sexually dangerous person shall list the facts and circumstances that demonstrate that the sex offender no longer poses the same degree of risk to the community.

(2)(A) A local law enforcement agency having jurisdiction, the Division of Community Correction, or the Parole Board may request the committee to reassess a sex offender's assigned risk level at any time.

(B) In the request for reassessment, the local law enforcement agency having jurisdiction, the Division of Community Correction, or the Parole Board shall list the facts and circumstances that prompted the requested reassessment.

(3) The committee shall also take into consideration any subsequent criminal act by the sex offender or sexually dangerous person during a reassessment.

History. Acts 1997, No. 989, § 17; 1999, No. 1353, §§ 10, 11; 2001, No. 1743, § 12; 2003 (2nd Ex. Sess.), No. 21, § 8; 2005, No. 1962, §§ 36, 37; 2006 (1st Ex. Sess.), No. 4, § 5; 2007, No. 394, § 9; 2009, No. 758, § 25; 2013, No. 505, § 15; 2019, No. 315, §§ 865, 866; 2019, No. 910, §§ 720-723.

Amendments. The 2019 amendment

by 315 inserted "rules" in (c)(1); and deleted "and regulations" following "rules" in (g)(1).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

CASE NOTES

Authority to Request Reassessment.

Circuit court properly affirmed the Sex Offender Assessment Committee's reassessment of defendant's community-notification status; while the county deputy prosecuting attorney was not authorized

to request risk-level reassessment, defendant failed to raise the issue before the Committee. *Sarna v. Ark. Dep't of Corr. Sex Offender Comm.*, 2017 Ark. App. 684, 537 S.W.3d 312 (2017).

12-12-918. Classification as sexually dangerous person.

(a)(1) In order to classify a person as a sexually dangerous person, a prosecutor may allege on the face of an information that the prosecutor is seeking a determination that the defendant is a sexually dangerous person.

(2)(A) If the defendant is adjudicated guilty, the court shall enter an order directing an examiner qualified by the Sex Offender Assessment Committee to issue a report to the sentencing court that recommends whether or not the defendant should be classified as a sexually dangerous person.

(B) Copies of the report shall be forwarded immediately to the prosecutor and to the defense attorney.

(C) The report shall not be admissible for purposes of sentencing.

(3) After sentencing, the court shall make a determination regarding the defendant's status as a sexually dangerous person.

(b)(1) In order for the examiner qualified by the committee to prepare the report:

(A) The defendant may be sent for evaluation to a facility designated by the Division of Correction; or

(B) The committee may elect to send an examiner to the local or regional detention facility.

(2) The cost of the evaluation shall be paid by the Division of Correction.

(c)(1) Should evidence be found in the course of any assessment conducted by the committee that a defendant appears to meet the criteria for being classified as a sexually dangerous person, the committee shall bring this information to the attention of the prosecutor, who will determine whether to file a petition with the court for the defendant to be classified as a sexually dangerous person.

(2) The sentencing court shall retain jurisdiction to determine whether a defendant is a sexually dangerous person for one (1) year after sentencing or for so long as the defendant remains incarcerated for the sex offense.

(d)(1) The judgment and commitment order should state whether the offense qualifies as an aggravated sex offense.

(2) Should the aggravated sex offense box not be checked on the commitment order, the court will be contacted by the committee and asked to furnish a written determination as to whether the offense qualifies as an aggravated sex offense.

History. Acts 1997, No. 989, § 18; 1999, No. 1353, § 12; 2001, No. 1743, § 13; 2003 (2nd Ex. Sess.), No. 21, § 9; 2013, No. 505, § 16; 2019, No. 910, §§ 724, 725.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (b)(1)(A) and (b)(2).

CASE NOTES

Applicability.

Sex Offender Assessment Committee did not exceed its authority in assessing defendant as a Level 4 sex offender where this section had not been enacted at the time of his rape conviction, and thus the

court presiding over his conviction in 1992 could not have made a designation under this section. Also, § 12-12-922 alternatively gives the Committee authority to conduct its own assessment as to whether a defendant is a sexually dangerous per-

son. Dillard v. Sex Offender Assessment
Comm., 2016 Ark. App. 147, 485 S.W.3d
701 (2016).

12-12-919. Termination of obligation to register.

(a) Lifetime registration is required for a sex offender who:

(1) Was found to have committed an aggravated sex offense;

(2) Was determined by the court to be or assessed as a Level 4 sexually dangerous person;

(3) Has pleaded guilty or nolo contendere to or been found guilty of a second or subsequent sex offense under a separate case number, not multiple counts on the same charge;

(4) Was convicted of rape by forcible compulsion, § 5-14-103(a)(1), or other substantially similar offense in another jurisdiction; or

(5) Has pleaded guilty or nolo contendere to or been found guilty of failing to comply with registration and reporting requirements under § 12-12-904 three (3) or more times.

(b)(1)(A)(i)(a) Any other sex offender required to register under this subchapter may apply for an order terminating the obligation to register to the sentencing court fifteen (15) years after the date the sex offender first registered in Arkansas.

(b) If the sex offender was incarcerated in a correctional facility, the date the sex offender first registered in Arkansas is the date the sex offender registered upon his or her release from the correctional facility.

(ii) After fifteen (15) years of having been registered as a sex offender in Arkansas, a sex offender sentenced in another state but permanently residing in Arkansas may apply for an order terminating the obligation to register in the circuit court of the county in which the sex offender resides or has last resided within this state.

(B)(i) The court shall hold a hearing on the application at which the applicant and any interested persons may present witnesses and other evidence.

(ii) No less than twenty (20) days before the date of the hearing on the application, a copy of the application for termination of the obligation to register shall be served on:

(a) The prosecutor of the county in which the adjudication of guilt triggering registration was obtained if the sex offender was convicted in this state; or

(b) The prosecutor of the county where a sex offender resides if the sex offender was convicted in another state.

(iii) A copy also shall be served to the Arkansas Sex Offender Registry in the Arkansas Crime Information Center and to Community Notification Assessment at least twenty (20) days before the hearing.

(C) If the sex offender has not been assessed in the five (5) years before making a request to terminate the obligation to register under this section, the prosecuting attorney may request a reassessment

and an order terminating the obligation to register shall not be granted without a reassessment.

(2) The court shall grant an order terminating the obligation to register upon proof by a preponderance of the evidence that:

(A) The applicant, for a period of fifteen (15) years after the applicant was released from prison or other institution or placed on parole, supervised release, or probation has not been adjudicated guilty of a sex offense; and

(B) The applicant is not likely to pose a threat to the safety of others.

(3)(A) A sex offender required to register as a result of a conviction for permitting the physical abuse of a minor under § 5-27-221 may apply for termination of the obligation to register at any time after July 22, 2015.

(B) The court shall grant an order under this subdivision (b)(3) terminating the obligation to register upon proof by a preponderance of the evidence that the facts underlying the offense for which the sex offender is required to register no longer support a requirement to register.

(c) If a court denies a petition to terminate the obligation to register under this section, the sex offender may not file a new petition to terminate the obligation to register under this section before three (3) years from the date the order denying the previous petition was filed.

(d) The center shall remove a sex offender from the registry upon receipt by the center of adequate proof that the sex offender has died.

History. Acts 1997, No. 989, § 19; 1999, No. 1353, § 13; 2001, No. 1743, § 14; 2003 (2nd Ex. Sess.), No. 21, § 10; 2013, No. 172, § 4; 2013, No. 505, § 17; 2013, No. 1248, § 1; 2015, No. 358, § 11; 2015, No. 1285, § 2; 2017, No. 382, § 1; 2017, No. 538, § 1; 2019, No. 800, § 1.

Amendments. The 2017 amendment by No. 382 added (d).

The 2017 amendment by No. 538 added (a)(4).

The 2019 amendment added (a)(5); re-wrote (b)(1)(A); added (b)(1)(C); and substituted “three (3) years” for “one (1) year” in (c).

CASE NOTES

ANALYSIS

Constitutionality.

Evidence.

Lifetime Registration.

Registration Requirements.

Constitutionality.

Subdivision (a)(3) of this section, requiring lifetime registration as applied to petitioner, did not violate his equal protection rights as there was a rational basis for treating sex offenders convicted under more than one case number differently than those convicted under a single case

number. Individuals convicted of a subsequent sex offense under a second case number have committed more than one sex crime, and the General Assembly could have concluded that those individuals are more likely to reoffend; and the underinclusiveness of a particular provision does not make the provision unconstitutional. *Ray v. State*, 2017 Ark. App. 574, 533 S.W.3d 587 (2017).

There was no merit to petitioner’s ex post facto claims where he offered no explanation as to how the 2001 amendment to this section, which added the

lifetime registration provisions, rendered the registration requirement punitive in nature. *Ray v. State*, 2017 Ark. App. 574, 533 S.W.3d 587 (2017).

That the prosecutor or court may chose to combine multiple charges under one case number for some sex offenders and not others does not render subdivision (a)(3) of this section unconstitutional. *Wyly v. State*, 2018 Ark. App. 505, 559 S.W.3d 326 (2018).

Subdivision (a)(3) of this section, as applied to appellant, did not violate due process. While appellant contended that application of the 2001 statutory provision requiring lifetime registration to the guilty pleas he made on the same day in 2000 to two offenses with different case numbers removed his right to petition the court to end his registration requirement, the 2001 provision did not impose a new legal consequence that violated due process. The registration requirement was in effect when appellant was convicted, and removal of the requirement was never guaranteed. *Wyly v. State*, 2018 Ark. App. 505, 559 S.W.3d 326 (2018).

Evidence.

Petition to terminate defendant's obligation to report as a sex offender in Arkansas was denied because he failed to prove that he was no longer a safety threat; an offender profile report showed that defendant had engaged in sexual conduct with his daughter for many years and was good at hiding things. Moreover, he had a lengthy history of inappropriate sexual behaviors with a strong addictive element, he went back to engaging in

certain behaviors after his release from prison, and he had a "true" finding regarding allegations of molesting his granddaughter in 2008. *Stow v. State*, 2016 Ark. App. 84, 482 S.W.3d 752 (2016).

Lifetime Registration.

Subdivision (a)(3) of this section, enacted in 2001, required lifetime sex offender registration for appellant, who had pled guilty on the same day in 2000 to a second sex offense involving a second victim under a separate case number. The Court of Appeals was not convinced that the statutory provision was meant to apply only to an offender who committed a second offense after having been convicted of a first offense; instead, the application of the provision to appellant fulfilled the legislative intent to protect the public from sex offenders who have been deemed more likely to reoffend because they have committed more than one offense and were prosecuted under different case numbers. *Wyly v. State*, 2018 Ark. App. 505, 559 S.W.3d 326 (2018).

Registration Requirements.

Defendant's second-degree sexual abuse conviction under former § 5-14-109 did not require defendant's lifetime sex offender registration; the crime was not substantially equivalent to aggravated sexual abuse under 18 U.S.C. § 2241, since second-degree sexual abuse did not require the use of force and required only sexual contact, while aggravated sexual abuse under the federal statute required a sexual act, as defined in 18 U.S.C. § 2246(2)(D). *Myers v. State*, 2017 Ark. App. 617, 535 S.W.3d 301 (2017).

12-12-922. Alternative procedure for sexually dangerous person evaluations — Administrative review of assigned risk level.

CASE NOTES

Procedure.

This section gave the Sex Offender Assessment Committee authority to conduct its own assessment as to whether defen-

dant was a sexually dangerous person. *Dillard v. Sex Offender Assessment Comm.*, 2016 Ark. App. 147, 485 S.W.3d 701 (2016).

12-12-925. Travel outside of the United States.

(a) A sex offender who is required to register under this subchapter must report in person at least twenty-one (21) days before traveling

outside of the United States to the local law enforcement agency having jurisdiction that he or she intends to travel outside of the United States.

(b) The sex offender making the report in person under this section must also report in person to the local law enforcement agency having jurisdiction:

(1) The dates of travel; and

(2) The foreign country, colony, territory, or possessions that the sex offender will visit.

(c)(1) A local law enforcement agency having jurisdiction receiving a report under this section shall immediately report the information to the Arkansas Crime Information Center.

(2) Upon receiving information from a local law enforcement agency having jurisdiction under this section, the center shall immediately report the information to the National Sex Offender Public Website and to the United States Marshals Service.

History. Acts 2013, No. 508, § 12; 2017, No. 916, § 10.

Amendments. The 2017 amendment, in (a), substituted “A sex offender who is required to register” for “A person who is required to register as a sex offender” and

inserted “in person”; in the introductory language of (b), substituted “The sex offender” for “the person” and inserted “in person” twice; and substituted “sex offender” for “person” in (b)(2).

12-12-928. Prohibition against recording a person under 14 years of age — Notification.

A person required to register as a sex offender under this subchapter and who has been assessed as a Level 3 or Level 4 sex offender shall be notified at his or her assessment that he or she is prohibited from recording a person under fourteen (14) years of age under § 5-14-137.

History. Acts 2019, No. 621, § 3.

12-12-929. Registered offender prohibited from holding position of public trust — Definition.

(a) As used in this section, “position of public trust” means a position that:

(1) Is in a public agency that provides public safety services, including without limitation a fire department, law enforcement agency, or emergency medical services agency; and

(2) As part of the ordinary course of the duties of the position, requires a person holding the position to have direct physical contact with or come within the immediate vicinity of a member of the public outside of the building in which the public agency is located.

(b) A sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who has been assessed as a Level 2, Level 3, or Level 4 offender may not hold a position of public trust.

History. Acts 2019, No. 987, § 1.

SUBCHAPTER 10 — CRIMINAL HISTORY INFORMATION AND REPORTING STANDARDS

SECTION.

12-12-1002. Penalties.

12-12-1010. Dissemination of criminal

history information for
other purposes.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-12-1002. Penalties.

(a) Upon conviction, any criminal justice agency or official subject to fingerprinting or reporting requirements under this subchapter that knowingly fails to comply with the fingerprinting or reporting requirements is guilty of a Class B misdemeanor.

(b) A person is guilty of a Class A misdemeanor upon conviction if the person knowingly:

(1) Accesses information or obtains information collected and maintained under this subchapter for a purpose not specified by this subchapter; or

(2) Releases or discloses information maintained under this subchapter to another person who lacks authority to receive the information.

(c) A person is guilty of a Class D felony upon conviction if the person violates subsection (a) of this section for the purpose of:

(1) Furthering the commission of a misdemeanor offense or felony offense by the person or another person;

(2) Enhancing or assisting a person’s position in a legal proceeding in this state or influencing the outcome of a legal proceeding in this state for the benefit of the person or a member of the person’s family;

(3) Causing a pecuniary or professional gain for the person or a member of the person’s family; or

(4) Political purposes for the person or a member of the person’s family.

(d) A person convicted of violating subsection (c) of this section is subject to an additional fine of not more than five hundred thousand dollars (\$500,000).

History. Acts 1993, No. 1109, § 15; 2009, No. 974, § 3; 2011, No. 1224, § 2; 2017, No. 250, § 5; 2017, No. 845, § 4.

Amendments. The 2017 amendment by No. 250 added “knowingly” at the end of the introductory language of (b); substituted “Accesses” for “Knowingly accesses” in (b)(1); and substituted “Releases” for “Knowingly releases” in (b)(2).

The 2017 amendment by No. 845 substituted “the fingerprinting or” for “such” following “comply with” in (a); added “knowingly” at the end of the introductory language of (b); in (b)(1), substituted “Accesses” for “Knowingly accesses” and deleted “willfully” preceding “obtains”; and substituted “Releases” for “Knowingly releases” in (b)(2).

12-12-1010. Dissemination of criminal history information for other purposes.

(a)(1) Criminal history information shall be made available to the Governor for purposes of carrying out the Governor’s constitutional authority involving pardons, executive clemencies, extraditions, or other duties specifically authorized by law.

(2) Criminal history information may be made available to:

(A) Persons performing research related to the administration of criminal justice, subject to conditions approved by the central repository or the Identification Bureau of the Division of Arkansas State Police to assure the security of the information and the privacy of individuals to whom the criminal history information relates; and

(B) Private contractors housing state inmates for a governmental criminal justice agency under a specific agreement approved by the Arkansas Crime Information Center that limits the use of the criminal history information to the purposes for which given to ensure the security and confidentiality of the criminal history information.

(b)(1) Criminal history information shall be made available according to the National Crime Prevention and Privacy Compact, 42 U.S.C. § 14616, as it existed on January 1, 2001.

(2)(A) The General Assembly approves and ratifies the National Crime Prevention and Privacy Compact, 42 U.S.C. § 14616, as it existed on January 1, 2001.

(B) The Director of the Arkansas Crime Information Center shall execute, administer, and implement the compact on behalf of the state and may adopt necessary rules and procedures for the national exchange of criminal history information for noncriminal justice purposes.

(C) Ratification of the compact does not affect the obligations and responsibilities of the center regarding the dissemination of criminal history information within Arkansas.

(c)(1) Criminal history information may be requested by a noncriminal justice agency and shall be made available after a review and express approval of dissemination by the director.

(2) Requests for criminal history information by a noncriminal justice agency shall be made to the director and shall include:

- (A) The specific criminal history information being requested;
- (B) A list of all persons who will have access to the criminal history information;
- (C) A detailed description of how the criminal history information will be used and protected; and
- (D) A named temporary custodian of the criminal history information received.

(3) Criminal history information that is requested under this subsection is limited to criminal history information pertaining to criminal offenses that occurred in Arkansas.

History. Acts 1993, No. 1109, § 9; 1999, No. 1330, § 1; 2001, No. 329, § 1; 2019, No. 315, § 867; 2019, No. 519, § 1; 2019, No. 910, § 5857.

Amendments. The 2019 amendment by No. 315 deleted “regulations” following “rules” in (b)(2)(B).

The 2019 amendment by No. 519 inserted “of criminal history information” in the section heading; substituted “Private contractors housing state inmates for a governmental criminal justice agency under a specific agreement” for “Private contractors providing penitentiary services to a governmental criminal justice agency pursuant to a specific agreement” in (a)(2)(B); deleted “the provisions of” fol-

lowing “according to” in (b)(1); deleted “and the compact shall remain in effect until legislation is enacted renouncing the compact” following “2001” in (b)(2)(A); deleted “the repository of criminal history records” following “Center” in (b)(2)(B); substituted “information” for “records” in (b)(2)(B) and (b)(2)(C); added (c); and made stylistic changes.

The 2019 amendment by No. 910 substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a)(2)(A).

U.S. Code. The National Crime Prevention and Privacy Compact, 42 U.S.C. § 14616, referred to in this section, is currently codified at 34 U.S.C. § 40316.

SUBCHAPTER 11 — STATE CONVICTED OFFENDER DNA DATA BASE ACT

SECTION.

12-12-1104. Powers and duties of State Crime Laboratory.

12-12-1109. DNA sample required upon adjudication of guilt.

SECTION.

12-12-1110. Procedures of withdrawal, collection, and transmission of DNA samples.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-12-1104. Powers and duties of State Crime Laboratory.

In addition to any other powers and duties conferred by this subchapter, the State Crime Laboratory shall:

- (1) Be responsible for the policy management and administration of the state DNA identification record system to support law enforcement agencies and other criminal justice agencies;
- (2) Promulgate rules to carry out the provisions of this subchapter; and
- (3) Provide for liaison with the Federal Bureau of Investigation and other criminal justice agencies in regard to the state's participation in CODIS or in a DNA data base designated by the laboratory.

History. Acts 1997, No. 737, § 4; 2019, deleted "and regulations" following "rules" No. 315, § 868. in (2).

Amendments. The 2019 amendment

12-12-1109. DNA sample required upon adjudication of guilt.

(a) A person who is adjudicated guilty for a qualifying offense on or after August 1, 1997, shall have a DNA sample drawn as follows:

(1)(A) A person who is adjudicated guilty for a qualifying offense and sentenced to a term of confinement for that qualifying offense shall have a DNA sample drawn upon intake to a prison, jail, or any other detention facility or institution.

(B) If the person is already confined at the time of sentencing, the person shall have a DNA sample drawn immediately after the sentencing;

(2)(A) A person who is adjudicated guilty for a qualifying offense shall have a DNA sample drawn as a condition of any sentence in which disposition will not involve an intake into a prison, jail, or any other detention facility or institution.

(B) Unless otherwise ordered by the court, the agency supervising the convicted offender shall determine the time and collection of the DNA sample;

(3) A person who is acquitted on the grounds of mental disease or defect of the commission of a qualifying offense and committed to an institution or other facility shall have a DNA sample drawn upon intake to that institution or other facility; and

(4) Under no circumstance shall a person who is adjudicated guilty for a qualifying offense be released in any manner after this disposition unless a DNA sample has been drawn.

(b) A person who has been adjudicated guilty for a qualifying offense before August 1, 1997, and who is still serving a term of confinement in connection therewith on August 1, 1997, shall not be released in any manner prior to the expiration of his or her maximum term of confinement unless and until a DNA sample has been drawn.

(c) All DNA samples taken pursuant to this section shall be taken in accordance with rules promulgated by the State Crime Laboratory in consultation with the Division of Correction, the Division of Community

Correction, the Department of Human Services, and the Administrative Office of the Courts.

(d)(1) When the state accepts a person from another state under any interstate compact or under any other reciprocal agreement with any county, state, or federal agency or any other provision of law, whether or not the person is confined or released, the acceptance is conditional on the person's providing a DNA sample if the person was convicted of an offense in any other jurisdiction which would be considered a qualifying offense as defined in § 12-12-1103(9) if committed in this state or if the person was convicted of an equivalent offense in any other jurisdiction.

(2) The person shall provide the DNA sample in accordance with the rules of the custodial institution or supervising agency.

(e)(1) The requirements of this subchapter are mandatory and apply regardless of whether or not a court advises a person that a DNA sample must be provided to the State DNA Data Base and State DNA Data Bank as a condition of probation or parole.

(2) A person who has been sentenced to death or life without the possibility of parole or to any life or indeterminate term of incarceration is not exempt from the requirements of this subchapter.

(3) Any person subject to this subchapter who has not provided a DNA sample for any reason, including the person's release prior to July 16, 2003, an oversight, or because of the person's transfer from another jurisdiction, shall give a DNA sample for inclusion in the data base after being notified by the supervising agency.

(4) In the event that a person's DNA sample is not adequate for any reason, the person shall provide another DNA sample for analysis.

History. Acts 1997, No. 737, § 9; 2001, No. 218, § 1; 2003, No. 1265, § 6[5]; 2003, No. 1470, § 4; 2019, No. 315, § 869; 2019, No. 910, § 726.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (c).

The 2019 amendment by No. 910, in (c), substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction".

12-12-1110. Procedures of withdrawal, collection, and transmission of DNA samples.

(a)(1)(A) Each DNA sample required to be taken pursuant to § 12-12-1109 from persons who are incarcerated shall be taken by the agency supervising the convicted offender.

(B) DNA samples from persons who are not committed or sentenced to a term of confinement shall be drawn at another facility to be specified by the sentencing court.

(C) Only those individuals qualified to draw DNA samples in a medically approved manner shall draw a DNA sample to be submitted for analysis.

(2) In addition to the DNA sample, a right thumbprint shall be taken from the person from whom the DNA sample is drawn for the exclusive purpose of verifying the identity of the person.

(3) The agency or institution having custody or control or the agency providing supervision of persons convicted or adjudicated delinquent for qualifying offenses, as appropriate, is authorized to contract with third parties to provide for the collection of the DNA samples.

(b) The DNA sample and the right thumbprint provided in subdivision (a)(2) of this section shall be delivered to the State Crime Laboratory in accordance with guidelines established by the laboratory.

(c)(1) Persons authorized by this section to draw blood shall not be criminally liable for drawing a DNA sample and transmitting the DNA sample pursuant to this subchapter if they perform these activities in good faith.

(2) Persons authorized to draw blood shall not be civilly liable for such activities when the persons acted in a reasonable manner and according to generally accepted medical and other professional practices.

(d)(1) Authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to submit to DNA testing authorized under this subchapter.

(2) No such employee shall be criminally or civilly liable for the use of reasonable force.

(e)(1) Any person who refuses to provide a DNA sample required by this subchapter will receive no further sentence reduction for meritorious good time until such time as a sample is provided, and the Division of Correction shall notify the Parole Board regarding the refusal.

(2) Any person who is subject to this subchapter who knowingly refuses to provide the DNA sample after receiving notification of the requirement to provide a DNA sample shall be guilty of a Class D felony.

History. Acts 1997, No. 737, § 10; substituted "Division of Correction" for 2003, No. 1470, § 4; 2019, No. 910, § 727. "Department of Correction" in (e)(1).

Amendments. The 2019 amendment

SUBCHAPTER 12 — VICTIM NOTIFICATION SYSTEM

SECTION.

12-12-1201. Authorization.

12-12-1202. Information provided.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two

uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through

6343 of this act being necessary for the and safety shall become effective on July preservation of the public peace, health, 1, 2019”.

12-12-1201. Authorization.

The Arkansas Crime Information Center is authorized to develop and operate a computerized victim notification system which shall provide:

(1) A mechanism for victims of criminal offenses or the victim's next of kin to access information about proceedings in the criminal justice and corrections systems by use of a twenty-four-hour toll-free in-watts telephone service; and

(2) Automatic notification by computerized telephone service to the victims of criminal offenses or the victim's next of kin of:

(A) An inmate's, parolee's, or probationer's status, including the location of the inmate, parolee, or probationer; and

(B) A person's release or modification of a conditional release from the custody of the Arkansas State Hospital, a local or regional hospital, a local or regional mental health facility, or a local or regional jail to which the person has been committed by a court when the person committed a criminal act against the victim but was adjudicated in the criminal case to have a mental disease or defect under § 5-2-301 et seq.

History. Acts 1997, No. 1250, § 1; substituted “of” for “about” at the end of 2015, No. 1265, § 3; 2017, No. 429, § 1. the introductory language of (2); and

Amendments. The 2017 amendment added (2)(B). redesignated part of former (2) as (2)(A);

12-12-1202. Information provided.

(a) A victim notification may be accomplished by means of the computerized victim notification system established under § 12-12-1201 if the notification is required under:

- (1) Section 12-29-114, pertaining to escape;
- (2) Section 16-21-106, pertaining to assistance to victims and witnesses of crimes;
- (3) Section 16-93-204, pertaining to executive clemency;
- (4) Section 16-93-615, pertaining to transfer hearings;
- (5) Section 16-93-702, pertaining to parole;
- (6) Section 16-97-102, pertaining to sentencing; or
- (7) Section 5-2-315, pertaining to discharge or conditional release from a commitment by a court to the Arkansas State Hospital.

(b) The computerized victim notification system established under § 12-12-1201 shall also include:

(1) Information about an inmate's custody status in regard to furloughs, work release, and community correction programs, if applicable;

(2) Information about a person who was committed to the Arkansas State Hospital due to his or her having a mental disease or defect under

§ 5-2-301 et seq. in regard to the status of the person being discharged or conditionally released under § 5-2-315, including the location and name of the local or regional hospital, local or regional mental health facility, or local or regional jail in which the person is committed if the person is not being held at the Arkansas State Hospital; and

(3) The location of information publicly available under § 12-27-145.

History. Acts 1997, No. 1250, § 2; 2005, No. 1962, § 44; 2011, No. 570, § 72; 2015, No. 1265, § 4; 2017, No. 429, § 2.

Amendments. The 2017 amendment substituted “if the notification is required

under” for “if under” in the introductory language of (a); added (a)(7); added “if applicable” in (b)(1); inserted (b)(2); and redesignated former (b)(2) as (b)(3).

SUBCHAPTER 14 — TASK FORCE ON RACIAL PROFILING

SECTION.

12-12-1402. Prohibition on racial profiling.

12-12-1403. Policies.

SECTION.

12-12-1404. Training.

12-12-1405. Racial profiling hotline.

RESEARCH REFERENCES

ALR. Construction and Application of State Statutory Provisions Prohibiting Racial Profiling. 102 A.L.R.6th 621 (2015).

12-12-1402. Prohibition on racial profiling.

(a) No member of the Division of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas Department of Transportation, a county sheriff's department, or a municipal police department, constable, or any other law enforcement officer of this state shall engage in racial profiling.

(b) The statements of policy and definitions contained in this subchapter shall not be construed or interpreted to be contrary to the Arkansas Rules of Criminal Procedure or the United States Constitution or the Arkansas Constitution.

History. Acts 2003, No. 1207, § 2; 2005, No. 2136, § 3; 2017, No. 707, § 16.

Amendments. The 2017 amendment substituted “Department of Transportation” for “State Highway and Transportation Department” in (a).

12-12-1403. Policies.

(a) The Division of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas Department of Transportation, all county sheriffs' departments, municipal police departments, constables, and all other law enforcement agencies of this state shall adopt a written policy that:

- (1) Prohibits racial profiling as defined in § 12-12-1401;
 - (2) Requires that law enforcement officers have reasonable suspicion prior to a stop, arrest, or detention;
 - (3) Defines reasonable suspicion to ensure that individuals are stopped for valid reasons and that race, ethnicity, national origin, or religion is not the basis for stops for violations for which nongroup members would not be stopped;
 - (4) Requires law enforcement officers to identify themselves by full name and jurisdiction and state the reason for the stop and when possible present written identification;
 - (5) Provides for a systematic review process by supervising personnel within a department or law enforcement agency for investigating allegations of racial profiling to determine whether any officers of the law enforcement agency have a pattern of stopping or searching persons, and if the review reveals a pattern, requires an investigation to determine whether a trend is present indicating that an officer may be using race, ethnicity, national origin, or religion as a basis for investigating other violations of criminal law;
 - (6) When a supervisor or other reviewer has detected a pattern of racial profiling, provides timely assistance, remediation, or discipline for individual law enforcement officers who have been found to be profiling by race, ethnicity, national origin, or religion;
 - (7) Ensures that supervisors will not retaliate against officers who report racial profiling by others; and
 - (8) Provides standards for the use of in-car audio and visual equipment, including the duration for which the recordings are preserved.
- (b)(1) Each law enforcement agency shall include a copy of the law enforcement agency's policy in the annual report that the law enforcement agency submits to Arkansas Legislative Audit.
- (2) Arkansas Legislative Audit shall submit to the Attorney General the name of any law enforcement agency that fails to comply with subdivision (b)(1) of this section, and the Attorney General shall take such action as may be necessary to enforce this section.
- (3) Arkansas Legislative Audit shall forward to the Attorney General a copy of each law enforcement agency's policy received by Arkansas Legislative Audit. The Attorney General shall review each law enforcement agency's policy to ensure that the law enforcement agency's policy meets the standards required by law.
- (c)(1) Each law enforcement agency may promote public awareness of the law enforcement agency's efforts to comply with the mandates of this section.
- (2) In addition, each law enforcement agency shall make available for public inspection a copy of the law enforcement agency's policy.

History. Acts 2003, No. 1207, § 3; substituted "Department of Transportation" for "State Highway and Transportation Department" in the introductory language of (a).
2005, No. 2136, § 4; 2007, No. 1048, § 2;
2009, No. 165, § 8; 2017, No. 707, § 17.

Amendments. The 2017 amendment

12-12-1404. Training.

(a) Each law enforcement agency shall provide annual training to all officers that:

- (1) Emphasizes the prohibition against racial profiling;
- (2) Ensures that operating procedures adequately implement the prohibition against racial profiling and that the law enforcement agency's law enforcement personnel have copies of, understand, and follow the operating procedures; and

(3) Includes foreign language instruction, if possible, to ensure adequate communication with residents of a community.

(b) The course or courses of instruction and the guidelines shall stress understanding and respect for racial, ethnic, national, religious, and cultural differences and development of effective and appropriate methods of carrying out law enforcement duties.

(c)(1) The Arkansas Commission on Law Enforcement Standards and Training shall adopt an initial training module concerning diversity and racial sensitivity for recruits and officers.

(2) The commission shall also adopt a training module for biennial recertification for all recruits and officers who have completed the initial training module.

(d)(1) The commission shall promulgate rules that set significant standards for all training required in this section.

(2) The commission may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) The commission may review and recommend changes to the racial profiling policy of any law enforcement agency.

(4) Upon request, the racial profiling policy of any law enforcement agency shall be made available to the commission for the purpose described in subdivision (d)(3) of this section.

(5) The commission may establish a toll-free hotline and an email address to receive complaints concerning racial profiling.

History. Acts 2003, No. 1207, § 4; in (d)(1), substituted "The commission" for 2005, No. 2136, § 5; 2011, No. 779, § 11; "By January 1, 2006, the commission" and 2017, No. 250, § 6. "rules that set" for "rules that will set".

Amendments. The 2017 amendment,

12-12-1405. Racial profiling hotline.

(a)(1) The Attorney General shall establish and publish procedures to receive complaints concerning racial profiling.

(2) The procedures shall include the operation of a toll-free hotline and may include procedures to receive written complaints through the mail, email, or facsimile.

(b) The Attorney General shall maintain statewide statistics on complaints received concerning racial profiling.

(c) The Attorney General annually shall report statewide statistics on complaints concerning racial profiling received under this section

during a year no later than October 1 of the next year to the Legislative Council.

(d) If the Attorney General suspects that a violation of law has occurred, the Attorney General shall refer the matter to the appropriate prosecuting attorney or other appropriate legal authority.

History. Acts 2009, No. 768, § 1; 2017, No. 250, § 7.

Amendments. The 2017 amendment

deleted “and the Task Force on Racial Profiling” at the end of (c).

SUBCHAPTER 15 — ARKANSAS STATE CRIMINAL RECORDS ACT

| | |
|-----------------------------|--------------------------------------------------|
| SECTION. | SECTION. |
| 12-12-1507. Administration. | 12-12-1513. Status as a registered sex offender. |
| 12-12-1512. Rules. | |

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-12-1507. Administration.

- (a)(1) Release of criminal history information under this subchapter shall be made only by the Identification Bureau of the Division of Arkansas State Police and the Arkansas Crime Information Center as authorized by law.
- (2) The Division of Arkansas State Police and the center may adopt rules consistent with the provisions and intent of this subchapter.
- (b) The division and the center may contract with the Information Network of Arkansas under the Information Network of Arkansas Act, § 25-27-101 et seq., or any other qualified third-party vendor in the establishment of the gateway or means of electronically processing transactions under this subchapter.
- (c)(1) The division shall not process a request for a Federal Bureau of Investigation background check unless a corresponding state background check through the Identification Bureau of the Division of Arkansas State Police has also been properly requested pursuant to this subchapter.

(2) The requirements of subdivision (c)(1) of this section may be waived upon written authorization of the Director of the Division of Arkansas State Police.

(d) The Division of Arkansas State Police Automated Fingerprint Identification System may access and use the National Fingerprint File and Interstate Identification Index as provided by the Federal Bureau of Investigation when the Arkansas Code authorizes a fingerprint-based Federal Bureau of Investigation check for a noncriminal justice purpose and a positive identification based on fingerprints is made.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 7; 2005, No. 1573, § 5; 2009, No. 168, § 2; 2019, No. 315, § 870; 2019, No. 910, § 5858.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a)(2).

The 2019 amendment by No. 910, throughout the section, substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” and “division” for “department”.

12-12-1512. Rules.

The Division of Arkansas State Police and the Arkansas Crime Information Center may promulgate rules as are necessary to implement, enforce, and administer this subchapter.

History. Acts 2003 (1st Ex. Sess.), No. 63, § 11; 2019, No. 315, § 871.

deleted “and regulations” following “rules” in the section heading and in the text.

Amendments. The 2019 amendment

12-12-1513. Status as a registered sex offender.

(a) The General Assembly finds that:

(1) The fact that a person is a registered sex offender or is required to register as a sex offender is releasable to employers and licensing boards;

(2) Certain agencies are mandated to perform background checks on persons who work with children, elderly persons, and individuals with intellectual or other developmental disabilities;

(3) The offenses for which an agency may exclude a person from employment are outlined in Arkansas law, but being a registered sex offender or being required to register as a sex offender is not listed as a disqualification;

(4) It is a primary government interest to protect the public against sex offenders. A registered sex offender poses a higher risk of reoffending; therefore, release of certain information will assist in protecting the safety of the public;

(5) Protection of the safety of the public will be increased by allowing agencies to immediately take the actions or precautions they deem necessary before employing or licensing the registrant or after employment or licensing of the registrant including, but not limited to, termination of employment or revocation of license;

(6) The provisions of this section are civil in nature and for the protection of the public; and

(7) It is the intent of this section that being a registered sex offender as a result of a court order or that being required to register as a sex offender as a result of a court order may exclude a person from employment or licensure with agencies and boards that are mandated by Arkansas law to perform criminal history background checks.

(b) Whenever a noncriminal justice criminal history background check is performed on a person under the provisions of any criminal background check requirement contained in the Arkansas Code for employment, licensure, or any other purpose, the person may be disqualified for employment, licensure, or any other purpose for which the background check was conducted if it is determined that a court has entered an order requiring the person to register as a sex offender.

History. Acts 2005, No. 1941, § 1; or other developmental disabilities” for 2019, No. 1035, § 8. “developmentally disabled persons” in

Amendments. The 2019 amendment (a)(2). substituted “individuals with intellectual

SUBCHAPTER 16 — CRIMINAL HISTORY FOR VOLUNTEERS ACT

SECTION.

12-12-1603. Definitions.

12-12-1603. Definitions.

As used in this subchapter:

(1) “Children” means individuals under sixteen (16) years of age;

(2) “Conviction” means that an individual has been found guilty of or has pleaded guilty or nolo contendere to any offense by any court in the State of Arkansas or of any similar offense by a court in another state or a federal court regardless of whether the conviction has been sealed or expunged;

(3) “Criminal history information” means a record compiled by the Arkansas Crime Information Center or the Identification Bureau of the Division of Arkansas State Police on an individual;

(4) “Domestic abuse” means the same as defined in § 9-4-102;

(5) “Elderly” means individuals sixty-five (65) years of age or older;

(6) “Employee” means an individual currently in the service of an employer for full-time or part-time compensation and employed by contract or at will, in which the employer has the authority to control the individual in the material details of how work shall be performed and when compensation shall be provided;

(7) “Individuals with disabilities” means individuals with mental illness or intellectual or other developmental disabilities or with physical or mental impairments that substantially limit one (1) or more of the major life activities of the individual;

(8) “Volunteer” means an individual who provides services involving contact with children, the elderly, victims of domestic abuse, or indi-

viduals with disabilities without an express or implied promise of compensation; and

(9) "Volunteer organization" means an individual, group of individuals, association, partnership, corporation, limited liability company or partnership, business, public school, school district, person or organization designated by a public school or school district to organize volunteers for the public school or school district, or other entity that has volunteers who provide services to children, the elderly, victims of domestic abuse, or individuals with disabilities.

History. Acts 2005, No. 1778, § 1; 2011, No. 779, § 12; 2013, No. 575, § 1; 2019, No. 1035, § 9.

Amendments. The 2019 amendment

substituted "individuals with mental illness or intellectual or other developmental disabilities or" for "mentally ill or developmentally disabled individuals" in (7).

SUBCHAPTER 17 — ADULT AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT ACT

SECTION.

12-12-1703. Definitions.

12-12-1708. Persons required to report adult or long-term care facility resident maltreatment.

12-12-1710. Investigation by Department of Human Services.

12-12-1711. Procedures for investigation by the Department of Human Services.

SECTION.

12-12-1712. Photographs and X-rays.

12-12-1714. Investigative powers of the Department of Human Services.

12-12-1719. Delegation of authority.

12-12-1720. Penalties.

12-12-1723. Rules.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health,

and safety shall become effective on July 1, 2019".

Acts 2019, No. 967, § 3: Apr. 12, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that currently each finding of abuse or neglect by the Department of Human Services is subject to challenge unless the department sends a person to conduct an investigation in person; that the department's review and adoption of the maltreatment investigation record submitted by a nursing home, a practice in place for decades, was determined to be out of compliance; and that this act is immediately necessary because this act would correct that situation. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by

the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

12-12-1703. Definitions.

As used in this subchapter:

(1)(A) "Abuse" means with regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person, excluding court-ordered medical care or medical care requested by the patient or long-term care facility resident or a person legally authorized to make medical decisions on behalf of the patient or long-term care facility resident;

(ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care;

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

(iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(B) "Abuse" means with regard to any person who is not a long-term care facility resident or a patient at the Arkansas State Hospital:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;

(ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause;

(2) "Adult maltreatment" means abuse, exploitation, neglect, or sexual abuse of an adult;

(3) "Caregiver" means any of the following that has the responsibility for the protection, care, or custody of an endangered person or an impaired person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of a court:

- (A) A related person or an unrelated person;
 - (B) An owner, an agent, or a high managerial agent of a public or private organization; or
 - (C) A public or private organization;
- (4) "Department" means the Department of Human Services;
- (5) "Endangered person" means:
- (A) A person eighteen (18) years of age or older who:
 - (i) Is found to be in a situation or condition that poses a danger to himself or herself; and
 - (ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or
 - (B) A long-term care facility resident or an Arkansas State Hospital resident who:
 - (i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to the long-term care facility resident; and
 - (ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;
- (6) "Exploitation" means the:
- (A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;
 - (B) Use of an adult endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another;
 - (C) The fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an endangered person, impaired person, or long-term care facility resident for monetary or personal benefit, profit, or gain, or that results in depriving the endangered person, impaired person, or long-term care facility resident of rightful access to or use of benefits, resources, belongings, or assets; or
 - (D) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;
- (7)(A) "Fiduciary" means a person or entity with the legal responsibility to:
- (i) Make decisions on behalf of and for the benefit of another person; and
 - (ii) Act in good faith and with fairness.
- (B) "Fiduciary" includes without limitation:
- (i) A trustee;
 - (ii) A guardian;
 - (iii) A conservator;
 - (iv) An executor;
 - (v) An agent under financial power of attorney or healthcare power of attorney; or

(vi) A representative payee;

(8) "Imminent danger to health or safety" means a situation in which death or serious bodily harm could reasonably be expected to occur without intervention;

(9)(A) "Impaired person" means a person:

(i) Eighteen (18) years of age or older who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation; or

(ii) Who is a long-term care facility resident and who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this subchapter, a long-term care facility resident is presumed to be an impaired person.

(C) For purposes of this subchapter, a person who has a representative payee appointed for the person by the Social Security Administration or another authorized agency is presumed to be an impaired person in relation to adult maltreatment through financial exploitation;

(10) "Impairment" means a disability that grossly and chronically diminishes a person's physical or mental ability to live independently or provide self-care as determined through observation, diagnosis, evaluation, or assessment;

(11) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for individuals with intellectual disabilities; or

(F) Any facility that provides long-term medical or personal care;

(12) "Long-term care facility resident" means a person, regardless of age, living in a long-term care facility;

(13) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, or sexual abuse of a long-term care facility resident;

(14) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(15) "Maltreated person" means a person, regardless of age, who has been abused, exploited, neglected, physically abused, or sexually abused;

(16) "Neglect" means:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

(i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

(ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel;

(iii) Negligently failing to carry out a treatment plan developed or implemented by the facility; or

(iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness;

(17) “Negligently” means a person’s failure to exercise the degree of care that a person of ordinary prudence would have exercised in the same circumstances;

(18)(A) “Physical injury” means the impairment of a physical condition or the infliction of substantial pain on a person.

(B) If the person is an endangered person or an impaired person, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(19) “Serious bodily harm” means sexual abuse, physical injury, or serious physical injury;

(20) “Serious physical injury” means physical injury to an endangered person or an impaired person that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(21) “Sexual abuse” means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor’s spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless; and

(22) “Subject of the report” means:

(A) The endangered person or impaired person;

(B) The adult’s legal guardian;

(C) The natural or legal guardian of a long-term care facility resident under eighteen (18) years of age; and

(D) The offender.

History. Acts 2005, No. 1812, § 1; §§ 1, 2; 2015, No. 1214, §§ 3, 4; 2017, No. 2007, No. 283, § 7; 2007, No. 497, § 4; 579, § 5.

2009, No. 165, §§ 9, 10; 2009, No. 525, **Amendments.** The 2017 amendment § 1; 2011, No. 206, § 7; 2013, No. 584, added the definition of “Impairment”.

CASE NOTES

Abuse.

Substantial evidence supported the finding of abuse as defined in this section where a witness testified that she heard the elderly resident of the long-term-care facility make a sound like it hurt when the

certified nursing assistant yanked her arm and that the resident indicated she was not okay. *Snyder v. Ark. Dep’t of Human Servs.*, 2018 Ark. App. 473, 559 S.W.3d 771 (2018).

12-12-1708. Persons required to report adult or long-term care facility resident maltreatment.

(a)(1) Whenever any of the following persons has observed or has reasonable cause to suspect that an endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment, the person shall immediately report or cause a report to be made in accordance with the provisions of this section:

- (A) A physician;
- (B) A surgeon;
- (C) A coroner;
- (D) A dentist;
- (E) A dental hygienist;
- (F) An osteopath;
- (G) A resident intern;
- (H) A nurse;
- (I) A member of a hospital's personnel who is engaged in the administration, examination, care, or treatment of persons;
- (J) A social worker;
- (K) A case manager;
- (L) A home health worker;
- (M) A mental health professional;
- (N) A peace officer;
- (O) A law enforcement officer;
- (P) A facility administrator or owner;
- (Q) An employee in a facility;
- (R) An employee of the Department of Human Services, with the exception of an employee working with an ombudsman program established by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, in accordance with 42 U.S.C. § 3001 et seq., as it existed on January 1, 2017;
- (S) A firefighter;
- (T) An emergency medical technician;
- (U) An employee of a bank or other financial institution;
- (V) An employee of the United States Postal Service;
- (W) An employee or a volunteer of a program or an organization funded partially or wholly by the department who enters the home of or has contact with an elderly person;
- (X) A person associated with the care and treatment of animals, such as animal control officers and humane society officials;
- (Y) An employee who enforces code requirements for a city, township, or municipality;
- (Z) Any clergy member, including without limitation, a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a religious organization, or an individual reasonably believed to be a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a

religious organization by the person consulting him or her, except to the extent he or she:

(i) Has acquired knowledge of suspected maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or

(ii) Received the knowledge of the suspected maltreatment from the offender in the context of a statement of admission; or

(AA) An employee working under contract for, or a contractor of, the Department of Human Services when acting within the scope of his or her contract or employment.

(2) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff, an employee in or owner of a facility, or an employee of the department, he or she shall immediately notify the person in charge of the institution, facility, or agency, or that person's designated agent, who shall then become responsible for making a report or cause a report to be made within twenty-four (24) hours or on the next business day, whichever is earlier.

(3) In addition to those persons and officials required to report suspected maltreatment, any other person may make a report if the person has observed an adult or long-term care facility resident being maltreated or has reasonable cause to suspect that an adult or long-term care facility resident has been maltreated.

(b)(1) A report for a long-term care facility resident shall be made:

(A) Immediately to the local law enforcement agency for the jurisdiction in which the long-term care facility is located; and

(B) To the Office of Long-Term Care, under rules of that office.

(2) A report of a maltreated adult who does not reside in a long-term care facility shall be made to the adult and long-term care facility maltreatment hotline provided in § 12-12-1707.

(c) No privilege or contract shall relieve any person required by this subchapter to make a notification or report from the requirement of making the notification or report.

(d)(1) Upon request the department shall provide a person listed in subdivision (a)(1) of this section with confirmation of receipt of a report of maltreatment.

(2) However, confirmation shall consist only of the acknowledgement of receipt of the report and the date the report was made to the department.

History. Acts 2005, No. 1812, § 1; 2007, No. 497, § 5; 2013, No. 584, § 3; 2017, No. 1034, § 1; 2019, No. 531, § 2; 2019, No. 315, § 872.

Amendments. The 2017 amendment added "with the exception of an employee working with an ombudsman program established by the Division of Aging, Adult, and Behavioral Health Services of the

Department of Human Services, in accordance with 42 U.S.C. § 3001 et seq., as it existed on January 1, 2017" to the end of (a)(1)(R).

The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b)(1)(B).

The 2019 amendment by No. 531 added (a)(1)(AA).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Breanna Trombley, Note: Criminal Law — No Stitches for Snitches: The Need for a Duty-to-Report Law in Arkansas, 34 U. Ark. Little Rock L. Rev. 813 (2012).

12-12-1710. Investigation by Department of Human Services.

(a) The Department of Human Services shall have jurisdiction to investigate all cases of suspected maltreatment of an endangered person or an impaired person.

(b)(1) The Adult Protective Services Unit of the Department of Human Services shall investigate:

(A) All cases of suspected adult maltreatment if the act or omission occurs in a place other than a long-term care facility; and

(B) All cases of suspected adult maltreatment of an adult endangered person or an adult impaired person if a family member of the adult endangered person or adult impaired person is named as the suspected offender, regardless of whether or not the adult endangered person or adult impaired person is a long-term care facility resident.

(2) The department shall investigate all cases of suspected maltreatment of a long-term care facility resident.

(3) If requested by the department, a law enforcement agency possessing jurisdiction shall assist in the investigation of any case of suspected adult maltreatment or long-term care facility resident maltreatment, including accompanying the department's investigator if the department has a reasonable belief that the investigator's safety could be compromised.

History. Acts 2005, No. 1812, § 1; substituted "department" for "Office of 2013, No. 584, § 4; 2019, No. 967, § 1. Long Term Care" in (b)(2).

Amendments. The 2019 amendment

CASE NOTES

In General.

Unambiguous language of the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., placed the responsibility to conduct a thorough investigation of allegations of abuse squarely on the Department of Human Services (DHS), not the nursing

home or long-term care facility, and nothing in the statutory provisions authorized DHS to delegate the responsibility, via its rulemaking authority, to the nursing home in which the abuse was alleged to have taken place. *Williform v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 314, 551 S.W.3d 401 (2018).

12-12-1711. Procedures for investigation by the Department of Human Services.

(a) The Department of Human Services shall conduct a thorough investigation of all suspected adult maltreatment or long-term care facility resident maltreatment in accordance with this subchapter.

(b)(1) The investigation shall be completed and an investigative determination entered within sixty (60) days.

(2) The investigation shall be conducted by an examination and review of the allegations and any other information concerning suspected adult maltreatment or long-term care facility resident maltreatment received by or collected by the department from any source.

(3) The investigation and written investigative report shall include:

(A) The nature, extent, and cause of the adult maltreatment or long-term care facility resident maltreatment;

(B) The identity of the person responsible;

(C) The names and conditions of other adults in the home, if the incident occurred in a home;

(D) An evaluation of the persons responsible for the care of the maltreated person, if any;

(E) The home environment, the relationship of the maltreated person to the next of kin or other person responsible for his or her care, and all other pertinent data; and

(F)(i) If the incident occurred in the home, a visit to the maltreated person's home and an interview with the maltreated person.

(ii) An investigator shall interview the maltreated person alone and out of the hearing of any next of kin or other person responsible for the maltreated person's care.

(iii) If necessary, an interpreter may be present during the interview of the maltreated person.

History. Acts 2005, No. 1812, § 1; 2019, No. 967, § 2.

Amendments. The 2019 amendment added (b)(2) and redesignated the remaining subdivisions accordingly; substituted "adult maltreatment or long-term care facility resident maltreatment" for "maltreatment" in (b)(3)(A); and, in (b)(3)(F)(i),

substituted "If the incident occurred in the home, a visit" for "A visit", substituted "maltreated person's home and an interview" for "maltreated adult's home, if the incident occurred in the home, and an interview", and substituted "person" for "adult".

CASE NOTES

ANALYSIS

In General.
Investigation.

In General.

Unambiguous language of the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., placed the responsibility to conduct a thorough investigation of allegations of abuse squarely on the Department of Human Services (DHS), not the nursing home or long-term care facility, and nothing in the statutory provisions authorized

DHS to delegate the responsibility, via its rulemaking authority, to the nursing home in which the abuse was alleged to have taken place. *Williford v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 314, 551 S.W.3d 401 (2018).

Investigation.

Department of Human Services's (DHS's) decision finding that a certified nursing assistant perpetrated an act of abuse on a resident of a long-term care facility was reversed where the facility administrator conducted the investigation, not DHS, and thus DHS had violated

the statutory provisions. *Williford v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 314, 551 S.W.3d 401 (2018).

12-12-1712. Photographs and X-rays.

(a) Any person who is required to report a case of adult maltreatment or long-term care facility resident maltreatment may take or cause to be taken, at public expense, color photographs of the area of trauma visible on the maltreated person and, if medically indicated, cause to be performed radiological examination of the maltreated person.

(b)(1) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff of any private or public institution or agency, he or she shall immediately notify the person in charge of the institution or agency or his or her designee.

(2) Upon notification under subdivision (b)(1) of this section, the person in charge of the institution or agency or his or her designee shall:

(A) Take or cause to be taken, at public expense, color photographs of physical trauma; and

(B) If medically indicated, cause to be performed a radiological examination of the maltreated person.

(c)(1) Any photograph or X-ray taken under this section shall be sent to the Department of Human Services as soon as possible.

(2) The department is not required to pay for a photograph or X-ray or a copy of a photograph or X-ray taken under this section.

History. Acts 2005, No. 1812, § 1; added the (c)(1) designation; inserted "under this section" in (c)(1); and added (c)(2). 2019, No. 955, § 1.

Amendments. The 2019 amendment

12-12-1714. Investigative powers of the Department of Human Services.

(a) If admission cannot be obtained to a home, an institution, or other place in which an allegedly maltreated person may be present, a circuit court, upon good cause shown, shall order the person responsible for or in charge of the home, institution, or other place to allow entrance for an examination and investigation.

(b) If admission to a home cannot be obtained due to hospitalization or similar absence of the maltreated person and admission to the home is necessary to complete an investigation, a circuit court, upon good cause shown, shall order a law enforcement agency to assist the Department of Human Services to obtain entrance to the home for the required investigation of the home environment.

(c)(1) Upon request, the medical, mental health, or other records regarding the maltreated person, including protected health information, maintained by any facility or maintained by any person required by this subchapter to report suspected adult maltreatment or long-term care facility resident maltreatment, shall be made available to the

department for the purpose of conducting an investigation under this subchapter.

(2) Upon request, financial records maintained by a bank or similar institution regarding a maltreated person shall be made available to the department for the purpose of conducting an investigation under this subchapter.

(3) A circuit court, upon good cause shown, shall order any facility or person that maintains medical, mental health, or other records, including protected health information, regarding a maltreated person to tender the records to the department for the purpose of conducting an investigation under this subchapter.

(4) The department is not required to pay for a copy of a medical, mental health, financial, or other record that is provided to the department under this subsection.

(d)(1) An investigation under this subchapter may include a medical, psychological, social, vocational, financial, and educational evaluation and review, if necessary.

(2)(A)(i) The department may file an ex parte petition in circuit court requesting an order of investigation.

(ii) If the court issues an order of investigation, any subsequent petition for custody shall be filed in this same case.

(B) No fees may be charged or collected by the clerk, including without limitation, fees for filing, summons, or subpoenas.

(3)(A) The department may compel the allegedly maltreated person to be evaluated in the least restrictive environment and least intrusive manner necessary to obtain an assessment if:

(i) The department is unable to secure an order of investigation from the circuit court during regular business hours;

(ii) The department has reasonable cause to suspect a significant risk for serious harm to the health or safety of the adult; and

(iii) The department cannot adequately assess:

(a) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition; or

(b) The adult's mental or physical impairment and ability to protect himself or herself from maltreatment.

(B)(i) Upon request by the department and without a court order, law enforcement and medical personnel shall assist the department as needed in obtaining an assessment on an allegedly maltreated person.

(ii) The assessment may include emergency treatment.

(C) No later than the next business day after the assessment, the department shall petition the court for an order of investigation as outlined in this section.

(4)(A) Upon a showing of reasonable cause to suspect an allegedly maltreated person is endangered or impaired, the circuit court shall issue an order of investigation.

(B) The order of investigation may include the power to compel the allegedly maltreated person to be assessed to determine whether the person:

(i) Lacks capacity to understand the nature and consequences of remaining in the situation or condition that poses a danger to the person; or

(ii) Has a mental or physical impairment such that the person is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(5) Upon good cause shown by the department, the circuit court may order emergency treatment of the allegedly maltreated adult.

(6)(A) The allegedly maltreated adult has a right to counsel, including appointed counsel if indigent, and a right to a hearing within five (5) business days after the allegedly maltreated adult is served with the ex parte order of investigation.

(B) If the allegedly maltreated adult is not indigent, the circuit court has the authority to appoint counsel to represent the allegedly maltreated adult and to direct payment from the assets of the adult for legal services received by the adult.

(C) If the department determines the allegedly maltreated adult is not endangered or impaired and releases the allegedly maltreated adult or ceases any assessment, a hearing under subdivision (d)(6)(A) of this section is not required.

(7)(A) At the five-day hearing the court shall determine whether the order of investigation shall continue for an additional period of time or be terminated.

(B) The burden shall be upon the department to show probable cause that the alleged maltreated person is an endangered or impaired person and that additional time is necessary to complete the investigation.

(8) The department and the court shall defer to any declaration executed in conformance with the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, § 20-17-201 et seq., and before any documented medical or judicial determination of lack of capacity.

(e) If before an investigation under this subchapter is completed, the Adult Protective Services Unit of the Department of Human Services determines that the immediate removal of a maltreated adult is necessary to protect the maltreated adult from imminent danger to his or her health or safety, the unit may:

(1) Petition a circuit court for an order of temporary custody; or

(2) Exercise a seventy-two-hour hold under the Adult Maltreatment Custody Act, § 9-20-101 et seq.

(f) Upon petition by the department, the court may direct payment from the assets of the allegedly maltreated adult for services rendered or goods purchased by or for the allegedly maltreated adult during the course of the investigation.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 8; 2007, No. 497, § 6; 2009, No. 525, § 2; 2019, No. 955, § 2. **Amendments.** The 2019 amendment added (c)(2).

12-12-1716. Adult and Long-term Care Facility Resident Maltreatment Central Registry.**CASE NOTES****Placement on Registry Required.**

This section states that an offender's name shall be placed in the registry if upon completion of the administrative hearing process, the department's investigative determination of founded is upheld.

The statute makes it mandatory for the offender's name to be placed on the registry; no lesser punishment is permitted. *Snyder v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 473, 559 S.W.3d 771 (2018).

12-12-1719. Delegation of authority.

The Secretary of the Department of Human Services may assign responsibilities for administering the various duties imposed upon the Department of Human Services under this subchapter to respective divisions of the department that in the secretary's opinion are best able to render service or administer the provisions of this subchapter.

History. Acts 2005, No. 1812, § 1; 2019, No. 910, § 5155.

Amendments. The 2019 amendment substituted "Secretary of the Department

of Human Services" for "Director of the Department of Human Services" and "secretary's" for "director's".

12-12-1720. Penalties.

(a)(1) A person commits the offense of failure to report under this subchapter in the first degree if he or she:

(A) Is a mandated reporter under § 12-12-1708;

(B) Has observed or has reasonable cause to suspect that an endangered person or impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment; and

(C) Knowingly fails to report or cause a report to be made to the adult and long-term care facility resident maltreatment hotline.

(2) Failure to report under this subchapter in the first degree is a Class B misdemeanor.

(b)(1) A person commits the offense of failure to report in the second degree if he or she:

(A) Is a mandated reporter under § 12-12-1708;

(B) Has observed or has reasonable cause to suspect that an endangered person or impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment; and

(C) Knowingly fails to make a report or cause a report to be made in the manner and time provided in this subchapter to the adult and long-term care facility resident maltreatment hotline.

(2) Failure to report in the second degree is a Class C misdemeanor.

(c) A person or caregiver required by this subchapter to report a case of suspected adult maltreatment or long-term care facility resident

maltreatment who purposely fails to do so is civilly liable for damages proximately caused by the failure.

(d)(1) A person commits the offense of false reporting of adult abuse if he or she purposely makes a false report to the adult and long-term care facility resident maltreatment hotline knowing the allegation in the false report to be false.

(2) For a first offense, false reporting of adult abuse is a Class A misdemeanor.

(3) For a subsequent offense, false reporting of adult abuse is a Class D felony.

(e)(1) A person commits the offense of unlawful disclosure of data or information under this subchapter if:

(A) He or she purposely discloses data or information to a person to whom disclosure is not permitted under § 12-12-1717 or § 12-12-1718; or

(B) He or she purposely encourages or permits the release of data or information to a person to whom disclosure is not permitted under § 12-12-1717 or § 12-12-1718.

(2) Unlawful disclosure of data or information under this subchapter is a Class A misdemeanor.

(f)(1) A person commits the offense of failure to report a death under this subchapter if he or she:

(A) Is required to report a death under § 12-12-1709;

(B) Has reasonable cause to suspect that an adult or long-term care facility resident has died as a result of maltreatment; and

(C) Knowingly fails to make the report in the time and manner required under this subchapter.

(2) Failure to report a death under this subchapter is a Class C misdemeanor.

History. Acts 2005, No. 1812, § 1; deleted (b)(1)(C)(ii); redesignated former 2009, No. 165, § 12; 2009, No. 525, § 6; (b)(1)(C)(i) as (b)(1)(C); and inserted “or 2017, No. 250, § 8. cause a report to be made” in (b)(1)(C).

Amendments. The 2017 amendment

12-12-1723. Rules.

The Secretary of the Department of Human Services may adopt rules to implement this subchapter.

History. Acts 2013, No. 584, § 15; substituted “Secretary of the Department of Human Services” for “Director of the 2019, No. 910, § 5156. Department of Human Services”.

Amendments. The 2019 amendment

CASE NOTES

Investigation.

Unambiguous language of the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., placed the responsibility to conduct a

thorough investigation of allegations of abuse squarely on the Department of Human Services (DHS), not the nursing home or long-term care facility, and nothing in the statutory provisions authorized

DHS to delegate the responsibility, via its rulemaking authority, to the nursing home in which the abuse was alleged to have taken place. *Williford v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 314, 551 S.W.3d 401 (2018).

SUBCHAPTER 18 — AUTOMATIC LICENSE PLATE READER SYSTEM ACT

SECTION.

12-12-1803. Restrictions on use.

12-12-1801. Title.

RESEARCH REFERENCES

ALR. Use of License Plate Readers, 32 A.L.R.7th Art. 8 (2018).

12-12-1803. Restrictions on use.

(a) Except as provided in subsection (b) of this section, it is unlawful for an individual, partnership, corporation, association, or the State of Arkansas, its agencies, and political subdivisions to use an automatic license plate reader system.

(b) An automatic license plate reader system may be used:

(1) By a state, county, or municipal law enforcement agency for the comparison of captured plate data with data held by the Office of Motor Vehicle, the Arkansas Crime Information Center, the National Crime Information Center, a database created by law enforcement for the purposes of an ongoing investigation, and the Federal Bureau of Investigation for any lawful purpose;

(2) By parking enforcement entities for regulating the use of parking facilities;

(3) For the purpose of controlling access to secured areas; or

(4)(A) By the Arkansas Highway Police Division of the Arkansas Department of Transportation for the electronic verification of registration, logs, and other compliance data to provide more efficient movement of commercial vehicles on a state highway.

(B) An automatic license plate reader system used under subdivision (b)(4)(A) of this section shall be installed at an entrance ramp at a weigh station facility for the review of a commercial motor vehicle entering the weigh station facility.

History. Acts 2013, No. 1491, § 1; 2015, No. 849, § 1; 2017, No. 250, § 9; 2017, No. 707, § 18.

Amendments. The 2017 amendment by No. 250 inserted the second occurrence of “weigh station” in (b)(4)(B).

The 2017 amendment by No. 707 substituted “Department of Transportation” for “State Highway and Transportation Department” in (b)(4)(A).

RESEARCH REFERENCES

ALR. Use of License Plate Readers, 32
A.L.R.7th Art. 8 (2018).

SUBCHAPTER 19 — LOCATION INFORMATION OF WIRELESS
TELECOMMUNICATIONS DEVICE AND GEOLOCATION OF INTERNET PROTOCOL
ADDRESS IN EMERGENCY SITUATION

SECTION.

- 12-12-1901. Definitions.
12-12-1902. Commercial mobile radio
service or internet service
provider to provide infor-
mation upon request.
12-12-1903. Limitation of liability.
12-12-1904. Providers to submit contact
information to Arkansas
Crime Information Center.

SECTION.

- 12-12-1905. Additional duties of Arkan-
sas Crime Information
Center.
12-12-1906. Prohibition against abuse.

12-12-1901. Definitions.

As used in this subchapter:

(1) “Commercial mobile radio service” means a commercial mobile service under 47 U.S.C. § 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66;

(2) “Contact information” means the name of a person or a compilation of names of persons who can immediately respond to and facilitate a request for location information from a public safety agency at any time;

(3) “Geolocation” means the identification or estimation of a geographic location of an internet-enabled device connected to a computer network;

(4) “Internet protocol (IP) address” means a numerical label assigned to each device connected to a computer network that uses internet protocol for communication;

(5) “Law enforcement agency” means the Division of Arkansas State Police, the Attorney General’s office, a prosecuting attorney’s office, a county sheriff’s department, a municipal police department, or a state agency with a law enforcement division;

(6) “Location information” means cell site or other geographic location estimate information in possession of a commercial mobile radio service provider; and

(7) “Public safety agency” means an agency that provides firefighting, law enforcement, medical, or other emergency services.

History. Acts 2015, No. 405, § 1; 2019, No. 584, § 1.

Amendments. The 2019 amendment inserted “and Geolocation of Internet Protocol Address” in the subchapter heading;

added (3) and (4) and redesignated the remaining subdivisions accordingly; added “or a state agency with a law enforcement division” in (5); and made stylistic changes.

12-12-1902. Commercial mobile radio service or internet service provider to provide information upon request.

(a) Upon request of a law enforcement agency, a commercial mobile radio service provider shall provide location information of a wireless telecommunications device and an internet service provider shall provide geolocation information of an internet protocol (IP) address to the law enforcement agency, in the most expeditious manner reasonably available to the internet service provider, in order that the law enforcement agency may respond to a call for emergency services or to an emergency situation that involves the risk of death or serious physical harm.

(b) This section does not prohibit a commercial mobile radio service provider or an internet service provider from establishing protocols by which the commercial mobile radio service provider or the internet service provider may voluntarily disclose location information or geolocation information.

(c) Within five (5) days of providing location information or geolocation information to a requesting law enforcement agency, a commercial mobile radio service provider or an internet service provider that supplied the law enforcement agency with location information or geolocation information under this subchapter may request, and the law enforcement agency shall provide, the court order, subpoena, or search warrant, as applicable, outlining the request made and the actions taken by the law enforcement agency.

History. Acts 2015, No. 405, § 1; 2019, No. 584, § 1. inserted “or internet service” in the section heading; rewrote (a) and (b) and

Amendments. The 2019 amendment added (c).

12-12-1903. Limitation of liability.

Notwithstanding any other provision of law, a commercial mobile radio service provider or an internet service provider, or the officers, employees, assigns, or agents of a commercial mobile radio service provider or an internet service provider are not liable for civil damages or criminal liability in connection with the development, design, installation, operation, maintenance, performance, release, or provision of location information or geolocation information or for any failure to timely process or release any request for location information or geolocation information as may be necessary under this subchapter.

History. Acts 2015, No. 405, § 1; 2019, No. 584, § 1. officers”, inserted “of a commercial mobile radio service provider or an internet service provider”, and inserted “or geolocation information” twice.

Amendments. The 2019 amendment inserted “or internet service provider”, substituted “or the officers” for “or its

12-12-1904. Providers to submit contact information to Arkansas Crime Information Center.

A commercial mobile radio service provider or internet service provider either authorized to do business in the state or that has submitted to the jurisdiction of the state shall immediately submit all contact information to the Arkansas Crime Information Center and shall immediately update the contact information as changes occur.

History. Acts 2015, No. 405, § 1; 2019, No. 584, § 1. **Amendments.** The 2019 amendment inserted “or internet service provider”.

12-12-1905. Additional duties of Arkansas Crime Information Center.

The Arkansas Crime Information Center shall make available the contact information obtained under § 12-12-1904 on at least a quarterly basis or immediately as changes occur to each public safety agency in the state.

History. Acts 2015, No. 405, § 1; 2019, No. 584, § 1. **Amendments.** The 2019 amendment made no changes to this section.

12-12-1906. Prohibition against abuse.

(a) A commercial mobile radio service provider or internet service provider that believes the requirements of this subchapter are being abused by a law enforcement agency or a specific law enforcement officer may report the suspected abuse to the Division of Arkansas State Police for further investigation.

(b) If the law enforcement agency that the commercial mobile radio service provider or internet service provider believes is abusing the requirements of this subchapter is the Division of Arkansas State Police, the commercial mobile radio service provider or internet service provider may report the suspected abuse to the Attorney General.

History. Acts 2019, No. 584, § 1.

CHAPTER 13
FIRE PREVENTION

SUBCHAPTER.
1. FIRE PREVENTION ACT.

SUBCHAPTER 1 — FIRE PREVENTION ACT

SECTION.
12-13-102. Definitions.
12-13-104. Administration and enforcement.
12-13-106. Section personnel.

SECTION.
12-13-107. Director of the Division of Arkansas State Police — Duties generally.
12-13-108. Ex officio deputies.

SECTION.

12-13-109. Fire drills.

12-13-110. Inspection of buildings.

12-13-111. Investigation of fires.

SECTION.

12-13-112. Inquiries.

12-13-114. Civil actions.

12-13-115. Annual report to Governor.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-13-102. Definitions.

As used in this subchapter:

(1) "Building" means any structure, framework, or housing, public or private;

(2) [Repealed.]

(3) "Fire hazard" means any building, premises, place, or thing which by reason of its nature, location, occupancy, condition, or use may cause loss, damage, or injury to persons or property by reason of fire, explosion, or action of the elements;

(4) "Members of fire departments" includes the personnel of all departments supported wholly or partially by public funds;

(5) "Officer" means an officer of the Division of Arkansas State Police whom the Director of the Division of Arkansas State Police may appoint or designate to execute the powers and perform the duties specified in this subchapter and also includes all peace officers as defined in subdivision (7) of this section;

(6)(A) "Owner" shall be given its ordinary meaning and includes any trustee or any person having a freehold interest in property.

(B) However, a lessee or mortgagee of property shall not be deemed the owner thereof;

(7) "Peace officer" includes every type of law enforcement officer commissioned and active within this state;

(8) "Person" means any individual, copartnership, corporation, or voluntary association; and

(9) "Premises" means any parcel of land, exclusive of buildings thereon, and includes parking lots, tourist camps, trailer camps, airports, stockyards, junkyards, and other places or enclosures, however owned, used, or occupied.

History. Acts 1955, No. 254, § 2; A.S.A. 1947, § 82-807; Acts 2019, No. 910, §§ 5859, 5860.

Amendments. The 2019 amendment repealed (2); and substituted “Division of

Arkansas State Police whom the Director of the Division of Arkansas State Police” for “Department of Arkansas State Police whom the director” in (5).

12-13-104. Administration and enforcement.

(a) The administration and enforcement of this subchapter are vested in the Division of Arkansas State Police.

(b) The Director of the Division of Arkansas State Police is empowered to create and maintain a State Fire Marshal Enforcement Section in the Division of Arkansas State Police and to appoint such personnel with such duties, powers, and titles as he or she may deem necessary for the proper administration and enforcement of this subchapter.

History. Acts 1955, No. 254, § 3; A.S.A. 1947, § 82-808; Acts 2019, No. 910, § 5861.

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” throughout the section.

Amendments. The 2019 amendment

12-13-106. Section personnel.

The members or heads of the State Fire Marshal Enforcement Section of the Division of Arkansas State Police shall be appointed and serve in the same manner as provided by law for the operation of other divisions of the Division of Arkansas State Police.

History. Acts 1981, No. 45, § 3; A.S.A. 1947, § 5-914.2a; Acts 2019, No. 910, § 5862.

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police”.

Amendments. The 2019 amendment

12-13-107. Director of the Division of Arkansas State Police — Duties generally.

(a) It shall be the duty of the Director of the Division of Arkansas State Police and his or her officers and deputies to enforce all laws and ordinances with regard to the following:

- (1) The prevention of fires;
- (2) The storage, sale, and use of combustibles and explosives;
- (3) The installation and maintenance of automatic or other fire alarm systems and fire extinguishing equipment;
- (4) The construction, maintenance, and regulation of fire escapes;
- (5) The means and adequacy of exits in case of fire from factories, asylums, hospitals, churches, schools, halls, theaters, and all other places in which numbers of people work, live, or congregate from time to time, for any purpose; and
- (6) The suppression of arson and the investigation of the cause, origin, and circumstances of fires.

(b) The director is empowered to adopt reasonable rules for the effective administration of this subchapter to accomplish its intent and purposes, and to safeguard the public from fire hazards.

(c) The director shall make reasonable rules for the keeping, storing, using, manufacture, selling, handling, transportation, or other disposition of highly inflammable materials and rubbish, gunpowder, dynamite, crude petroleum or any of its products, explosives or compounds or any other explosive, including fireworks, and firecrackers, and he or she may prescribe the materials and construction of receptacles and buildings to be used for any of those purposes.

(d) Nothing in this subchapter shall apply to the inspection of boilers, § 20-23-101 et seq., the administration and enforcement of which is now vested in the Division of Labor.

History. Acts 1955, No. 254, §§ 5, 6; A.S.A. 1947, §§ 82-810, 82-811; Acts 2019, No. 315, § 873; 2019, No. 910, §§ 5402, 5863.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b); and substituted “rules” for “regulations” in (c).

The 2019 amendment by No. 910 substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in the introductory language of (a); and substituted “Division of Labor” for “Department of Labor” in (d).

12-13-108. *Ex officio* deputies.

All mayors, members of fire departments, and peace officers shall be *ex officio* deputies to the Director of the Division of Arkansas State Police. They shall be subject to the duties and obligations imposed by this subchapter in fire prevention and in the investigation of the cause, origin, and circumstances of fires within their jurisdiction.

History. Acts 1955, No. 254, § 4; A.S.A. 1947, § 82-809; Acts 2019, No. 910, § 5864.

Amendments. The 2019 amendment

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in the first sentence.

12-13-109. Fire drills.

It shall be the duty of the Director of the Division of Arkansas State Police, his or her officers, and deputies to require teachers of public and private schools and all educational institutions to have one (1) fire drill each month and to keep all doors and exits unlocked during school hours.

History. Acts 1955, No. 254, § 8; A.S.A. 1947, § 82-813; Acts 2019, No. 910, § 5865.

Amendments. The 2019 amendment

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police”.

12-13-110. Inspection of buildings.

(a)(1) Upon complaint of any person or on their own motion, the Director of the Division of Arkansas State Police and his or her officers

or deputies may inspect all buildings and premises within their jurisdiction and issue an order for the compliance with the director's rules.

(2) Failure or refusal to comply with an order of the director in the enforcement of the rules shall be a Class A misdemeanor.

(b)(1) The director and his or her officers and deputies shall inspect all places of public assembly, including factories or industrial plants normally employing ten (10) or more persons, where hazards to the lives and safety of citizens might be present.

(2) If upon completion of the inspection an unsafe or hazardous condition is found to exist, then the director shall promptly notify the owner or operator of the public assembly in writing.

(3) Upon the receipt of the written notice, the owner or operator shall remove the hazardous or unsafe condition.

(4)(A) On failure to remedy the condition, the director may file injunction proceedings in the circuit court of the jurisdiction to abate the condition as being a nuisance.

(B) The suit shall be filed in the name of the director for the use and benefit of the State of Arkansas without bond for costs.

History. Acts 1955, No. 254, §§ 7, 11; A.S.A. 1947, §§ 82-812, 82-816; Acts 2005, No. 1994, § 199; Acts 2019, No. 315, § 874; 2019, No. 910, § 5866.

The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a)(1).

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a)(1) and (a)(2).

12-13-111. Investigation of fires.

(a)(1) The deputies to the Director of the Division of Arkansas State Police shall investigate each fire causing loss of life or damage to property within their jurisdiction to determine if the fire was caused by negligence or design.

(2) If it appears that a fire is of suspicious origin or that a crime has been committed in connection therewith, the deputy shall immediately notify the director, who shall promptly initiate an inquiry to ascertain the cause of the fire and the person, if any, responsible therefor.

(b) On his or her own motion and at any time, the director may investigate the origin and circumstances of any fire in this state without restraint or liability for trespass.

(c) Any building or premises may be inspected along with the contents and occupancy thereof.

(d) On request, every fire insurance company licensed in this state shall furnish to the director any information it may have concerning any fire in this state.

History. Acts 1955, No. 254, § 12; A.S.A. 1947, § 82-817; Acts 2019, No. 910, § 5867.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State

Police" in (a)(1).

12-13-112. Inquiries.

(a) When the Director of the Division of Arkansas State Police or any officer or deputy has reason to believe that a crime or other offense has been committed in connection with any fire, the director or his or her deputy may conduct an inquiry in relation thereto.

(b) The inquiry shall be held at such time and place as the director or his or her deputy shall determine.

(c) The director or his or her deputy shall have the power:

(1) Of subpoena to compel the attendance of witnesses to testify at the inquiry and for the production of books, records, papers, other writings, or things deemed material to the inquiry;

(2) To administer oaths or affirmations of witnesses; and

(3) To cause testimony to be taken stenographically, transcribed, and preserved.

(d) The inquiry or examination may be public or private as the director or his or her deputy may determine, and persons other than those required to be present may be excluded from the place thereof.

(e) Witnesses may be kept separate and apart from each other and not allowed to communicate with one another until they have been examined.

(f) Willful false swearing by any witness shall be deemed perjury and be punishable as such.

(g)(1) In case of disobedience of a subpoena, the director or his or her deputy may invoke the aid of the proper circuit court of the jurisdiction to compel the attendance and testimony of witnesses and production of books, papers, written material, and things incident to the inquiry.

(2) The circuit court is empowered to punish as a contempt any disobedience or refusal to obey a subpoena.

(h)(1) No person shall be excused from testifying or producing any books, records, papers, or things, or upon any hearing, when ordered to do so, upon the ground that the testimony or evidence may tend to incriminate him or her or subject him or her to a criminal penalty.

(2)(A) However, no person shall be prosecuted or subjected to criminal liability for or on account of any transaction made or thing concerning which he or she may testify or produce evidence, documentary or otherwise, before the director or his or her deputy.

(B) No person so testifying shall be exempt from prosecution and punishment for perjury committed in his or her testimony.

(i) The prosecuting attorney of any district, upon request of the director or his or her officer or deputy, shall assist in any investigation when called upon to do so.

History. Acts 1955, No. 254, §§ 13, 14; A.S.A. 1947, §§ 82-818, 82-819; Acts 2019, No. 910, § 5868.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State

Police” in (a).

12-13-114. Civil actions.

(a)(1) No act taken by the Director of the Division of Arkansas State Police shall affect the rights of any policy holder or of any insurance company with regard to a loss by reason of any fire which the director has investigated.

(2) The result of any investigation shall not be given in evidence upon the trial of any civil action upon any policy.

(b) No statement made by any insurance company, its officers or agents, or by anyone representing the insurance company or its officers or agents, made with reference to the origin, cause, or supposed origin or cause of the fire to the director or his or her officers or deputies shall be admitted in evidence or made the basis for any civil action for damages.

History. Acts 1955, No. 254, § 16; A.S.A. 1947, § 82-821; Acts 2019, No. 910, § 5869.

Amendments. The 2019 amendment

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a)(1).

12-13-115. Annual report to Governor.

Annually on or before July 1, the Director of the Division of Arkansas State Police shall transmit to the Governor a full report of his or her proceedings under this subchapter, including statistics and recommendations he or she may deem advisable.

History. Acts 1955, No. 254, § 17; A.S.A. 1947, § 82-822; Acts 2019, No. 910, § 5870.

Amendments. The 2019 amendment

substituted “Division of Arkansas State Police” for “Department of Arkansas State Police”.

CHAPTER 14

STATE CAPITOL POLICE

SECTION.
12-14-103. Rules.
12-14-104. Territory — Cumulative remedies.

SECTION.
12-14-109. Certain records exempt.

Effective Dates. Acts 2017, No. 474, § 2: Became law without Governor’s signature, Mar. 13, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this exemption is needed for the security of the State Capitol Building and Capitol Hill apartment complex; that

this act protects confidential records belonging to the State Capitol Police; and that this act is immediately necessary because currently this exemption does not exist in law. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall

become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-14-103. Rules.

The Secretary of State is hereby authorized and empowered to promulgate rules, and to amend or change the same from time to time as he or she shall deem necessary, providing for the operation and organization of the State Capitol Police, so long as such rules are not arbitrary or capricious.

History. Acts 1989, No. 468, § 1; 2019, No. 315, § 875. deleted "and regulations" following "rules" in the section heading and twice in the text.

Amendments. The 2019 amendment

12-14-104. Territory — Cumulative remedies.

(a)(1) This chapter shall apply to and encompass all lands, buildings, and improvements that are commonly referred to as the State Capitol grounds and additional areas set out in this section and that are bounded as follows: Beginning at the point where the centerline of Tenth Street intersects the eastern edge of the right-of-way of the Missouri Pacific and Rock Island Railroad Line, then northeast along the southern boundary of that right-of-way to the point where the centerline of Cross Street, extended northeast, intersects that right-of-way, then south along the centerline of Cross Street to the point where that line intersects the northern edge of the Wilbur Mills Freeway, also known as I-630, surveyed by the Arkansas Department of Transportation, to the point of the beginning.

(2) However, nothing in this chapter shall be interpreted as in any way interfering with the ownership and control that are by law now vested in the governing boards of each department as to its lands, buildings, and improvements.

(b) The provisions of this chapter shall be cumulative to any remedies that each department may now possess for enforcing its rules, including its rights to:

- (1) Impose sanctions through fees and charges;
- (2) Discipline;
- (3) Deny service; and
- (4) Expel.

History. Acts 1989, No. 468, § 1; 2001, No. 1082, § 1; 2017, No. 707, § 19; 2019, No. 315, § 876.

Amendments. The 2017 amendment substituted "Department of Transporta-

tion" for "State Highway and Transportation Department" in (a)(1).

The 2019 amendment deleted "and regulations" following "rules" in the introductory language of (b).

12-14-109. Certain records exempt.

A record or other information related to the operations, emergency procedure, and security personnel of the State Capitol Police is confidential and not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., including without limitation:

(1) Records or other information that upon disclosure could reasonably be expected to be detrimental to the public safety, including without limitation records or other information concerning emergency or security plans, State Capitol Building or Capitol Hill apartment complex safety plans, monitoring capabilities, procedures, risk assessments, studies, measures, or systems; and

(2) Records or other information relating to the number of licensed security officers, certified State Capitol Police officers, or other security personnel, as well as any personal information about a security officer, certified State Capitol Police officer, or other security personnel.

History. Acts 2017, No. 474, § 1.

CHAPTER 15
WEAPONS

SUBCHAPTER.

2. CONCEALED HANDGUN PERMITS.

SUBCHAPTER 2 — CONCEALED HANDGUN PERMITS

SECTION.

12-15-201. Definitions.

12-15-202. Eligibility to carry concealed handgun.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-15-201. Definitions.

As used in this subchapter:

(1) “Auxiliary law enforcement officer” means a person certified by the Arkansas Commission on Law Enforcement Standards and Training and approved by the county sheriff or chief of police of a municipality where he or she is acting as an auxiliary law enforcement officer if the auxiliary law enforcement officer has completed the minimum training requirements and is certified as an auxiliary law enforcement officer in accordance with the commission;

(2) “Certified law enforcement officer” means any appointed or elected law enforcement officer or county sheriff employed by a public law enforcement department, office, or agency who:

(A) Is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state; and

(B) Has met the selection and training requirements for certification set by the commission;

(3) “Employee of a local detention facility” means a person who:

(A) Is employed by a county sheriff or municipality that operates a local detention facility and whose job duties include:

(i) Securing a local detention facility;

(ii) Monitoring inmates in a local detention facility; or

(iii) Administering the daily operation of the local detention facility;

(B) Has completed the minimum training requirements; and

(C) Has obtained authorization from the chief of police of the law enforcement agency or county sheriff and the authorization is:

(i) In writing;

(ii) In the possession of the employee of a local detention facility; and

(iii) Produced upon demand at the request of any law enforcement officer or owner or operator of any of the prohibited places under § 5-73-306;

(4) “In good standing” means that the person:

(A) Was not terminated;

(B) Did not resign in lieu of termination; or

(C) Was not subject to a pending disciplinary action or criminal investigation at the time of his or her retirement or resignation from the public law enforcement department, office, or agency;

(5) “Local detention facility” means a jail or other facility that is operated by a municipal police force or a county sheriff for the purpose of housing persons charged with or convicted of a criminal offense; and

(6) “Public law enforcement department, office, or agency” means any public police department, county sheriff’s office, or other public agency, force, or organization whose primary responsibility as established by law, statute, or ordinance is the enforcement of the criminal, traffic, or highway laws of this state.

History. Acts 1995, No. 1332, § 2; 2007, No. 675, § 1; 2013, No. 415, § 2; 2013, No. 1220, § 2; 2017, No. 957, § 4.

Amendments. The 2017 amendment deleted (1)(B); and redesignated the former introductory language of (1) and

(1)(A) as (1).

12-15-202. Eligibility to carry concealed handgun.

(a) Any certified law enforcement officer, auxiliary law enforcement officer, employee of a local detention facility, prosecuting attorney, or deputy prosecuting attorney designated by the prosecuting attorney may carry a concealed handgun if the certified law enforcement officer, auxiliary law enforcement officer, employee of a local detention facility, prosecuting attorney, or deputy prosecuting attorney designated by the prosecuting attorney:

(1) Is presently in the employ of a public law enforcement department, office, or agency;

(2) Is authorized by the public law enforcement department, office, or agency to carry a firearm in the course and scope of his or her duties;

(3) Is not subject to any disciplinary action that suspends his or her authority as a certified law enforcement officer, auxiliary law enforcement officer, employee of a local detention facility, prosecuting attorney, or deputy prosecuting attorney designated by the prosecuting attorney;

(4) Is carrying a badge and appropriate written photographic identification issued by the public law enforcement department, office, or agency identifying him or her as a certified law enforcement officer, auxiliary law enforcement officer, employee of a local detention facility, prosecuting attorney, or deputy prosecuting attorney designated by the prosecuting attorney;

(5) Is not otherwise prohibited under federal law;

(6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) Has fingerprint impressions on file with the Division of Arkansas State Police Automated Fingerprint Identification System.

(b)(1) A concealed handgun may be carried by any retired law enforcement officer or retired auxiliary law enforcement officer acting as a retired auxiliary law enforcement officer who:

(A) Retired in good standing from service with a public law enforcement department, office, or agency for reasons other than mental disability;

(B) Immediately before retirement was a certified law enforcement officer authorized by a public law enforcement department, office, or agency to carry a firearm in the course and scope of his or her duties;

(C) Is carrying appropriate written photographic identification issued by a public law enforcement department, office, or agency identifying him or her as a retired and former certified law enforcement officer;

(D) Is not otherwise prohibited under federal law from receiving or possessing a firearm;

(E) Has fingerprint impressions on file with the system together with written authorization for state and national level criminal history record screening;

(F) During the most recent twelve-month period has met, at the expense of the retired law enforcement officer, the standards of this state for training and qualification for active law enforcement officers to carry firearms;

(G) Before his or her retirement, worked or was employed as a law enforcement officer or acted as an auxiliary law enforcement officer for an aggregate of ten (10) years or more; and

(H) Is not under the influence of or consuming alcohol or another intoxicating or hallucinatory drug or substance.

(2)(A) The chief law enforcement officer of the city or county shall keep a record of all retired law enforcement officers authorized to carry a concealed handgun in his or her jurisdiction and shall revoke any authorization for good cause shown.

(B) The Director of the Division of Arkansas State Police shall keep a record of all retired Department of Arkansas State Police or Division of Arkansas State Police officers authorized to carry a concealed handgun in the state and shall revoke any authorization for good cause shown.

(c)(1)(A) A firearms instructor certified by the Arkansas Commission on Law Enforcement Standards and Training who is employed by any law enforcement agency in this state may certify or recertify that a retired law enforcement officer has met the training and qualification requirements for certification set by the commission for active law enforcement officers to carry firearms.

(B) A retired law enforcement officer shall pay the expenses for meeting the training and qualification requirements described in subdivision (c)(1)(A) of this section.

(2) A firearms instructor who certifies or recertifies that a retired law enforcement officer has met the training and qualification requirements for certification set by the commission for active law enforcement officers to carry firearms under subdivision (c)(1)(A) of this section shall complete and submit any required paperwork to the commission.

(d) Any certified law enforcement officer or retired law enforcement officer carrying a concealed handgun under this section is not subject to the prohibitions and limitations of § 5-73-306.

(e)(1) Any presently employed certified law enforcement officer authorized by another state to carry a concealed handgun shall be entitled to the same privilege while in this state, but subject to the same restrictions of this section, provided that the state which has authorized the officer to carry a concealed handgun extends the same privilege to presently employed Arkansas-certified law enforcement officers.

(2) The director shall make a determination as to which states extend the privilege to carry a concealed handgun to presently employed Arkansas-certified law enforcement officers and shall then determine which states' officers' authority to carry concealed handguns will be recognized in Arkansas.

History. Acts 1995, No. 1332, § 1; 1997, No. 92, § 1; 1997, No. 302, § 1; 2001, No. 251, § 1; 2001, No. 585, § 1; 2003, No. 348, § 1; 2007, No. 134, § 1; 2007, No. 675, § 2; 2013, No. 415, § 3; 2013, No. 539, § 3; 2013, No. 1220, § 3; 2015, No. 958, § 1; 2015, No. 1161, § 1; 2017, No. 957, § 5; 2019, No. 910, §§ 5871, 5872.

Amendments. The 2017 amendment inserted “or consuming” preceding “alcohol” in (b)(1)(H).

The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (a)(7); and, in (b)(2)(B), substituted the first occurrence of “Division of Arkansas State Police” for “Department of Arkansas State Police” and substituted “retired Department of Arkansas State Police or Division of Arkansas State Police officers” for “retired department officers”.

CHAPTER 18
CHILD MALTREATMENT ACT

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 3. CHILD ABUSE HOTLINE.
- 4. REPORTING SUSPECTED CHILD MALTREATMENT.
- 5. NOTICE PROCEDURES AFTER A REPORT OF SUSPECTED CHILD MALTREATMENT HAS BEEN MADE.
- 6. INVESTIGATIVE PROCEEDINGS.
- 7. INVESTIGATIVE FINDINGS.
- 8. ADMINISTRATIVE HEARINGS.
- 9. CHILD MALTREATMENT CENTRAL REGISTRY.
- 10. PROTECTIVE CUSTODY.
- 12. TRAINING REGARDING SEXUALLY EXPLOITED CHILDREN.

Cross References. Child Maltreatment Investigations Oversight Committee, § 10-3-3201 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-18-103. Definitions.
- 12-18-104. Confidentiality.
- 12-18-106. Cooperative agreements.

SECTION.

- 12-18-108. Maintenance of forensic samples from abortions performed on a child.

Effective Dates. Acts 2019, No. 556, § 7: Mar. 26, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Centers for Disease Control and Prevention currently estimates that five hundred fifty-one (551) girls or women in Arkansas are at the risk of, or have undergone, female genital mutilation; that female genital mutilation is recognized globally as a human rights viola-

tion; and that this legislation is immediately needed to help the women of Arkansas as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Gov-

ernor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto”.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded

sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-18-103. Definitions.

As used in this chapter:

(1)(A) “Abandonment” means:

(i) The failure of a parent to provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future or the failure of a parent to support or maintain regular contact with a child without just cause; or

(ii) An articulated intent to forego parental responsibility.

(B) “Abandonment” does not include:

(i) Acts or omissions of a parent toward a married minor; or

(ii) A situation in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources;

(2)(A) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(B) “Abortion” does not mean the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy if done with the intent to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion;

or

(iii) Remove an ectopic pregnancy;

(3)(A) “Abuse” means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child’s care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of

the child's parent, or any person legally responsible for the child's welfare, but excluding the spouse of a minor:

- (i) Extreme or repeated cruelty to a child;
- (ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;
- (iii) Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;
- (iv) Any injury that is at variance with the history given;
- (v) Any nonaccidental physical injury;
- (vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:
 - (a) Throwing, kicking, burning, biting, or cutting a child;
 - (b) Striking a child with a closed fist;
 - (c) Shaking a child; or
 - (d) Striking a child on the face or head;
- (vii) Any of the following intentional or knowing acts, with or without physical injury:
 - (a) Striking a child six (6) years of age or younger on the face or head;
 - (b) Shaking a child three (3) years of age or younger;
 - (c) Interfering with a child's breathing;
 - (d) Pinching, biting, or striking a child in the genital area;
 - (e) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;
 - (f) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;
 - (g) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:
 - (1) Marijuana;
 - (2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;
 - (3) A narcotic; or
 - (4) An over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;
 - (h) Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine; or
 - (i) Subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel;

(viii) Recruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or

(ix) Female genital mutilation.

(B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.

(ii) "Abuse" does not include when a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if:

(a) The person exercising the restraint is:

(1) An employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.; and

(2) Acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The child welfare agency has policy and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger or hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;

(f) The restraint is for a reasonable period of time; and

(g) The restraint is in conformity with training and child welfare agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(4) "Caretaker" means a parent, guardian, custodian, foster parent, or any person fourteen (14) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare, but excluding the spouse of a minor;

(5)(A) "Central intake", otherwise referred to as the "Child Abuse Hotline", means a unit that shall be established by the Department of

Human Services for the purpose of receiving and recording notification made pursuant to this chapter.

(B) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;

(6) "Child" or "juvenile" means an individual who is from birth to eighteen (18) years of age;

(7) "Child maltreatment" means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;

(8) "Department" means the Department of Human Services and the Division of Arkansas State Police;

(9) "Deviate sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;

(10)(A)(i) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of physical injury to or death, rape, sexual abuse, or kidnapping of any person.

(ii) If the act was committed against the will of the child, then forcible compulsion has been used.

(B) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion;

(11) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(12) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or of any other person under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(13) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;

(14)(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of the married minor, which constitute:

(i) Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;

(ii) Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;

(v) Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility;

(vii) Failure to appropriately supervise the child that results in the child's being left alone:

(a) At an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm; or

(b) In inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm;

(viii) Failure to appropriately supervise the child that results in the child's being placed in:

(a) Inappropriate circumstances creating a dangerous situation; or

(b) A situation that puts the child at risk of harm;

(ix) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home-schooled; or

(x) An act or omission by the parent, custodian, or guardian of the child that results in the child's being habitually and without justification absent from school.

(B)(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) As used in this subdivision (14)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(b) of this section;

(15) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has been found by a court of competent jurisdiction to be the biological father of the child;

(16) "Pornography" means:

(A) Pictures, movies, or videos that lack serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(17) "Reproductive healthcare facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, contraceptives, contraceptive counseling, sex education, or gynecological care and services;

(18) "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(19) "Severe maltreatment" means sexual abuse, sexual exploitation, acts or omissions that may or do result in death, abuse involving the use of a deadly weapon as defined by § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child;

(20) "Sexual abuse" means:

(A) By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live sexual activity;

(B) By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than fifteen (15) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(C) By a person twenty (20) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age:

- (i) Sexual intercourse, deviate sexual activity, or sexual contact;
- (ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

- (iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

- (i) Sexual intercourse, deviate sexual activity, or sexual contact;

- (ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;

- (iii) Forcing or encouraging the watching of pornography;

- (iv) Forcing, permitting, or encouraging the watching of live sexual activity;

- (v) Forcing the listening to a phone sex line;

- (vi) An act of voyeurism; or

- (vii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(E) By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age:

- (i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or

- (ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or

(F) By a person eighteen (18) years of age or older to a person who is younger than eighteen (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act;

(21)(A)(i) "Sexual contact" means any act of sexual gratification involving:

- (a) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;

- (b) The encouraging of a child to touch the offender in a sexual manner; or

- (c) The offender requesting to touch a child in a sexual manner.

- (ii) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

(B) "Sexual contact" does not include normal affectionate hugging;

(22) "Sexual exploitation" means:

(A) The following by a person eighteen (18) years of age or older to a child who is not his or her spouse:

- (i) Allowing, permitting, or encouraging participation or depiction of the child in:

- (a) Prostitution;

- (b) Obscene photography; or

- (c) Obscene filming; or

- (ii) Obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose;

- (B) The following by a caretaker to a child:
- (i) Allowing, permitting, or encouraging participation or depiction of the child in:
 - (a) Prostitution;
 - (b) Obscene photography; or
 - (c) Obscene filming; or
 - (ii) Obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose;
- (23) "Significant other" means a person:
- (A) With whom the parent shares a household; or
 - (B) Who has a relationship with the parent that results in the person's acting in loco parentis with respect to the parent's child or children, regardless of living arrangements;
- (24) "Subject of the report" means:
- (A) The offender;
 - (B) The custodial and noncustodial parents, guardians, and legal custodians of the child who is subject to suspected maltreatment; and
 - (C) The child who is the subject of suspected maltreatment;
- (25) "Underaged juvenile offender" means any child younger than fourteen (14) years of age for whom a report of sexual abuse has been determined to be true for sexual abuse to another child;
- (26) "Voyeurism" means looking, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude;
- (27) "Died suddenly and unexpectedly" means a child death that was not caused by a known disease or illness for which the child was under a physician's care at the time of death, including without limitation a child death as a result of the following:
- (A) Sudden infant death syndrome;
 - (B) Sudden unexplained infant death;
 - (C) An accident;
 - (D) A suicide;
 - (E) A homicide; or
 - (F) Other undetermined circumstance;
- (28)(A) "Female genital mutilation" means a procedure that involves the partial or total removal of the external female genitalia or any procedure harmful to the female genitalia, including without limitation:
- (i) A clitoridectomy;
 - (ii) The partial or total removal of the clitoris or the prepuce;
 - (iii) The excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;
 - (iv) The infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris;
 - (v) Pricking, piercing, incising, scraping, or cauterizing the genital area; or
 - (vi) Any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

(B) “Female genital mutilation” does not include acts or conduct that otherwise would be considered female genital mutilation if the acts or conduct occur in the furtherance of a surgical or other lawful medical procedure, performed by a licensed medical professional, and:

(i) Is necessary to preserve or protect the physical health of the child upon whom the surgical or other lawful medical procedure was performed; or

(ii) Is part of a sex reassignment procedure as requested by the child who was the patient in the sex reassignment procedure;

(29) “Family member” means a person within the fifth degree of consanguinity by virtue of blood or adoption;

(30) “Fictive kin” means a person who:

(A) Is not related to a child by blood or marriage; and

(B) Has a strong, positive, and emotional tie or role in the:

(i) Life of the child; or

(ii) Life of the parent of the child if the child is an infant; and

(31) “Imminent harm” means an act of harm that is a danger:

(A) To the physical, mental, or emotional health of a child;

(B) That is constrained by time; and

(C) That may only be prevented by immediate intervention by a court.

History. Acts 2009, No. 749, § 1; 2011, No. 779, §§ 15-17; 2011, No. 1143, §§ 2-5; 2013, No. 725, §§ 2-4; 2013, No. 1006, §§ 1-6; 2015, No. 1004, § 1; 2015, No. 1026, §§ 1, 2; 2015, No. 1092, § 4; 2015, No. 1211, § 1; 2017, No. 209, §§ 6, 7; 2017, No. 250, § 10; 2019, No. 554, § 2; 2019, No. 556, §§ 2, 3; 2019, No. 881, § 1; 2019, No. 927, § 2.

Amendments. The 2017 amendment by No. 209 added (3)(A)(viii) and (20)(F).

The 2017 amendment by No. 250 added (27) (definition for “Died suddenly and unexpectedly”).

The 2019 amendment by No. 554, in (14)(A)(x), substituted “An act” for “as a result of an act”, substituted “omission by the parent, custodian, or guardian of the child that results in the child being habitually” for “omission by the child’s parent or guardian, the child is habitually”; and made stylistic changes.

The 2019 amendment by No. 556 added (3)(A)(ix); and added (28).

The 2019 amendment by No. 881 added (28) and (29) [now (29) and (30)].

The 2019 amendment by No. 927 added (28) [now (31)].

CASE NOTES

ANALYSIS

Abuse.
Neglect.

Abuse.

Substantial evidence supported the ALJ’s decision that appellant’s name was to remain on the Child Maltreatment Central Registry based on a true finding of abuse in 2002 where the ALJ found cuts, bruises, and welts in photos of the teenage child taken after appellant had disci-

plined her with a belt and the ALJ focused not on the bruises but on the broken skin on the child’s upper back and upper arm and red linear marks on her upper arm. *Smith v. Ark. Dep’t of Human Servs.*, 2018 Ark. App. 438, 559 S.W.3d 291 (2018).

Neglect.

Father placed his child in a car seat in a car on a hot day, the child was left alone, and the foreseeability of harm in that circumstance was clear; thus, the administrative law judge’s finding of neglect by

inadequate supervision comported with case law; the father lost awareness of the child's presence in the car and failed to remove him, and this placed him in inappropriate circumstances creating a dangerous situation. *W.N. v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 346, 552 S.W.3d 483 (2018).

Neglect by inadequate supervision does not require a culpable mental state because it is defined in the Child Maltreatment Act outside of the Arkansas Criminal Code. *W.N. v. Ark. Dep't of Human*

Servs., 2018 Ark. App. 346, 552 S.W.3d 483 (2018).

It was not clear that the administrative law judge (ALJ) incorrectly relied on the criminal-negligence standard; however, the father could not show prejudice because applying the criminal-negligence standard only heightened the standard by which the ALJ could find neglect by inadequate supervision under the Child Maltreatment Act. *W.N. v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 346, 552 S.W.3d 483 (2018).

12-18-104. Confidentiality.

(a) Any data, records, reports, or documents that are created, collected, or compiled by or on behalf of the Department of Human Services, the Division of Arkansas State Police, or other entity authorized under this chapter to perform investigations or provide services to children, individuals, or families shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Any data, records, reports, or documents released under this chapter to law enforcement, a prosecuting attorney, or a court by the Department of Human Services and the Division of Arkansas State Police are confidential and shall be sealed and not re-disclosed without a protective order to ensure the items of evidence for which there is a reasonable expectation of privacy are not distributed to a person or institution without a legitimate interest in the evidence, provided that nothing in this chapter is deemed to abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or the law.

(c) Confidential data, records, reports, or documents created, collected, or compiled by or on behalf of the Department of Human Services, the Division of Arkansas State Police, or other entity authorized under this chapter to perform investigations or provide services to children, individuals, or families may be:

(1) Disclosed to and discussed with a member of the Child Maltreatment Investigations Oversight Committee; and

(2) Disclosed and discussed in closed meetings conducted by the Child Maltreatment Investigations Oversight Committee under § 10-3-3201 et seq.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 7; 2015, No. 1004, § 2; 2017, No. 713, § 4; 2019, No. 1081, § 7.

Amendments. The 2017 amendment added (c).

The 2019 amendment inserted (c)(1) and redesignated former (c) as the intro-

ductory language of (c) and (c)(2); in the introductory language of (c), deleted "This section does not prohibit the disclosure and discussion of" from the beginning, and added "may be" at the end; and added "Disclosed and discussed" in (c)(2).

12-18-106. Cooperative agreements.

(a) The Department of Human Services and the Division of Arkansas State Police shall implement a coordinated multidisciplinary team approach to intervention in reports involving severe maltreatment and all reports requested by a prosecuting attorney pertaining to a law enforcement or prosecuting attorney's investigation by initiating formal cooperative agreements with:

- (1) Law enforcement agencies;
- (2) Prosecuting attorneys; and
- (3) Other appropriate agencies and individuals.

(b) The Secretary of the Department of Human Services may enter into cooperative agreements with other states to create a national child maltreatment registration system.

History. Acts 2009, No. 749, § 1; 2015, No. 1004, § 3; 2019, No. 910, § 5157.

substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (b).

Amendments. The 2019 amendment

12-18-108. Maintenance of forensic samples from abortions performed on a child.

(a)(1) A physician who performs an abortion on a child who is less than seventeen (17) years of age at the time of the abortion shall preserve under this subchapter fetal tissue extracted during the abortion in accordance with rules adopted by the office of the State Crime Laboratory.

(2) Before submitting the tissue under subdivision (a)(1) of this section, the physician shall redact protected health information as required under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) The physician or the reporting medical facility shall contact the law enforcement agency in the jurisdiction where the child resides.

(b) The State Crime Laboratory shall adopt rules prescribing:

(1) The amount and type of fetal tissue to be preserved under this section;

(2) Procedures for the proper preservation of the tissue for the purpose of DNA testing and examination;

(3) Procedures for documenting the chain of custody of the tissue for use as evidence;

(4) Procedures for proper disposal of fetal tissue preserved under this section;

(5) A uniform reporting instrument mandated to be utilized by physicians when submitting fetal tissue under this section which shall include the name and address of the physician submitting the fetal tissue and the name and complete address of residence of the parent or legal guardian of the child upon whom the abortion was performed; and

(6) Procedures for communication with law enforcement agencies regarding evidence and information obtained under this section.

(c) Failure of a physician to comply with this section or any rule adopted under this section shall constitute unprofessional conduct under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 2013, No. 725, § 5; 2017, No. 1018, § 1. substituted “seventeen (17)” for “fourteen (14)” in (a)(1).

Amendments. The 2017 amendment

SUBCHAPTER 2 — OFFENSES AND PENALTIES

12-18-203. Making a false report under this chapter.

CASE NOTES

Applicability.

Because a school principal admitted that she knew the allegation of child abuse to be true, this section could not

possibly be applied to her. *Struble v. Blytheville Sch. Dist.*, 2017 Ark. App. 99, 516 S.W.3d 269 (2017).

SUBCHAPTER 3 — CHILD ABUSE HOTLINE

SECTION.

- 12-18-301. Creation.
- 12-18-303. Minimum requirements for a report to be accepted.
- 12-18-304. Qualifying reports of certain types of child maltreatment.

SECTION.

- 12-18-310. Referrals on children born with and affected by fetal alcohol spectrum disorder or prenatal drug exposure to an illegal drug or a legal substance.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-18-301. Creation.

(a) There is created the Child Abuse Hotline.

(b) The Child Abuse Hotline is a unit established within the Department of Human Services and the Division of Arkansas State Police, or their designee, with the purpose of receiving and recording notifications and reports under this chapter.

(c)(1) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number.

(2) The toll-free telephone number under this section shall be known as the "Child Abuse Hotline".

(d) All persons whether a mandated reporter under this chapter or not may use the Child Abuse Hotline to report child maltreatment or suspected child maltreatment.

History. Acts 2009, No. 749, § 1; 2015, substituted "Division of Arkansas State No. 1004, § 5; 2019, No. 910, § 5873. Police" for "Department of Arkansas State Police" in (b).
Amendments. The 2019 amendment

12-18-303. Minimum requirements for a report to be accepted.

(a) Except as otherwise provided in this section, the Child Abuse Hotline shall accept a report if:

(1) The report is of:

(A) An allegation of child maltreatment or suspected child maltreatment, that if found to be true, would constitute child maltreatment as defined under this chapter;

(B) The death of a child who died suddenly and unexpectedly; or

(C) The death of a child reported by a coroner or county sheriff under § 20-15-502;

(2) Sufficient identifying information is provided to identify and locate the child or the child's family; and

(3) The child or the child's family is present in Arkansas or the incident occurred in Arkansas.

(b)(1) If the alleged offender resides in another state and the incident occurred in another state or country, the Child Abuse Hotline shall document receipt of the report, transfer the report to the Child Abuse Hotline of the state or country where the alleged offender resides or the incident occurred, and, if child protection is an issue, forward the report to the Department of Human Services or the equivalent governmental agency of the state or country where the alleged offender resides.

(2) Any record of receipt of a report under subdivision (b)(1) of this section may be used only within the Department of Human Services for purposes of administration of the program and shall not be disclosed except to:

(A) The prosecuting attorney; or

(B) A law enforcement agency.

(3) Data identifying a reporter under subdivision (b)(1) of this section shall be maintained under § 12-18-502.

(c) If the incident occurred in Arkansas and the victim, offender, or victim's parents no longer reside in Arkansas, the Child Abuse Hotline shall accept the report and the Arkansas investigating agency shall contact the other state and request assistance in completing the investigation, including an interview with the out-of-state subject of the report.

(d)(1) If the Child Abuse Hotline receives a report and the alleged offender is a resident of the State of Arkansas and the report of child maltreatment or suspected child maltreatment in the state or country in which the act occurred would also be child maltreatment in Arkansas at the time the incident occurred, the Child Abuse Hotline shall refer the report to the appropriate investigating agency within the state so that the Arkansas investigative agency can investigate alone or in concert with the investigative agency of any other state or country that may be involved.

(2) The Arkansas investigating agency shall make an investigative determination and shall provide notice to the alleged offender that, if the allegation is determined to be true, the offender's name will be placed in the Child Maltreatment Central Registry.

(3) The other state may also conduct an investigation in this state that results in the offender's being named in a true report in that state and placed in the Child Maltreatment Central Registry of that state.

(e)(1)(A) A report of child maltreatment that does not meet the requirements of subsection (a) of this section shall not be accepted by the Child Abuse Hotline.

(B) The Child Abuse Hotline may accept a report of child maltreatment that does not meet the requirements of subsection (a) of this section if sufficient information is provided to accept the report under §§ 12-18-304 — 12-18-310.

(2)(A) The Department of Human Services and the Division of Arkansas State Police shall establish procedures for the Child Abuse Hotline.

(B) The procedures established by the Department of Human Services and the Division of Arkansas State Police shall include without limitation the:

(i) Creation of a secondary review of an accepted report of child maltreatment by the investigating agency assigned under § 12-18-601 to ensure that the report of child maltreatment meets the requirements of this section; and

(ii) Ability of the Child Abuse Hotline and the investigating agency to contact the Department of Human Services to obtain or determine information relevant to whether a report of child maltreatment should be accepted.

(3) A report of child maltreatment that does not meet the requirements of subsection (a) of this section shall be considered screened-out for the purposes of releasing information under § 12-18-910.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 6; 2015, No. 1211, § 2; 2017, No. 250, § 11; 2019, No. 802, § 2.

A.C.R.C. Notes. Acts 2019, No. 802, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) All members of society desire the safety of all children;

"(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

"(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary lifestyle and lack of physical activity for children today, which is often encouraged

by parents and guardians, including without limitation by insisting on driving their children to school;

“(4) As measured by incidences of mental health difficulties, the over-supervised youth of today experience more difficulties when they reach adulthood than earlier generations;

“(5) Earlier generations learned resilience by walking, bicycling, playing, helping, and solving problems without constant adult intervention;

“(6) Parents and guardians are often in the best position to weigh the risk and make decisions concerning the safety of children under their care, including without limitation where their child may go, with whom, and when; and

“(7) Parents and guardians who have done nothing more than briefly and safely permitted their children to remain unsupervised should not be subject to investigation and possible prosecution as it causes unnecessary governmental intrusion and diversion of valuable public resources.

“(b) It is the intent of the General Assembly that this act:

“(1) Protect and promote the inherent right of a parent or guardian to raise his or her children;

“(2) Protect the decision of a parent or a guardian to grant his or her children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home; and

“(3) Ensure that valuable public resources are used most effectively to protect children by providing a secondary review to ensure that:

“(A) Calls to the Child Abuse Hotline are properly accepted;

“(B) Child maltreatment investigations are closed when the results of the investigation indicate that the allegations lack merit; and

“(C) Only the names of offenders who pose a risk to a vulnerable population are placed on the Child Maltreatment Central Registry.”

Amendments. The 2017 amendment inserted the comma following “maltreatment” in (a)(1)(A); and rewrote (a)(1)(B).

The 2019 amendment added (e).

12-18-304. Qualifying reports of certain types of child maltreatment.

(a)(1) The Child Abuse Hotline shall accept a report of child maltreatment if any of the following intentional or knowing acts are alleged to occur:

(A) Throwing, kicking, burning, biting, or cutting a child;

(B) Striking a child with a closed fist;

(C) Shaking a child four (4) years of age or older; or

(D) Striking a child seven (7) years of age or older on the face or on the head.

(2) A report under this subsection shall not be determined to be true unless the child suffered an injury as the result of the act.

(b) The Child Abuse Hotline shall accept a report of child maltreatment if any of the following intentional or knowing acts are alleged to occur:

(1) Shaking a child three (3) years of age or younger;

(2) Striking a child six (6) years of age or younger on the face or on the head;

(3) Interfering with a child's breathing; or

(4) Pinching, biting, or striking a child in the genital area.

(c)(1) The Child Abuse Hotline shall accept a report of child maltreatment if a child suffers an injury as the result of a restraint.

(2) The report shall be determined not to be true if the injury is a minor temporary mark or causes transient pain and was an acceptable restraint as provided under this chapter.

(d)(1) The Child Abuse Hotline shall accept a report of child maltreatment involving a bruise to a child even if at the time of the report the bruise is not visible if the bruising occurred:

(A) Within the past fourteen (14) days; and

(B) As a result of child maltreatment as described under subsections (a)-(c) of this section.

(2) However, the report under this subsection shall not be determined to be true unless the existence of the bruise is corroborated.

(e) The Child Abuse Hotline shall not accept a report of environmental neglect pertaining to head lice unless the:

(1) Head lice is chronic; or

(2) Alleged victim currently has sores that require immediate medical attention.

(f) The Child Abuse Hotline shall not accept a report of giving a child or permitting a child to consume or inhale a poisonous or noxious substance as described in § 12-18-103(3)(A)(vii)(f) unless the alleged incident occurred within the previous three (3) months.

(g) The Child Abuse Hotline shall accept a report regarding educational neglect if the:

(1) Report alleges that a parent, custodian, or guardian of a child who is at least (6) years of age and under eighteen (18) years of age failed to enroll the child in school and lawfully home-school the child; or

(2) Report alleges that:

(A) An act or omission of a parent, custodian, or guardian of a child who is at least six (6) years of age and under eighteen (18) years of age caused the child to be absent from school;

(B) The child's absence from school was not caused by the refusal of the child to attend school;

(C) The child has been habitually absent from school without justification; and

(D) The child's absence from school has had a negative impact on the child's performance at school.

History. Acts 2009, No. 749, § 1; 2013, No. 1486, § 1; 2015, No. 1026, § 3; 2015, No. 1215, §§ 1, 2; 2019, No. 554, § 3.

Amendments. The 2019 amendment substituted "shall accept a report regard-

ing educational neglect if the" for "shall accept each call regarding educational neglect" in the introductory language of (g); and added (g)(1) and (g)(2).

12-18-310. Referrals on children born with and affected by fetal alcohol spectrum disorder or prenatal drug exposure to an illegal drug or a legal substance.

(a) All healthcare providers involved in the delivery or care of infants shall:

(1) Contact the Department of Human Services regarding an infant born with and affected by:

- (A) A fetal alcohol spectrum disorder;
- (B) Maternal substance abuse resulting in prenatal drug exposure to an illegal or a legal substance; or
- (C) Withdrawal symptoms resulting from prenatal drug exposure to an illegal or a legal substance; and
- (2) Share all pertinent information, including health information, with the department regarding an infant born with and affected by:
 - (A) A fetal alcohol spectrum disorder;
 - (B) Maternal substance abuse resulting in prenatal drug exposure to an illegal or a legal substance; or
 - (C) Withdrawal symptoms resulting from prenatal drug exposure to an illegal or a legal substance.
- (b) The department shall accept referrals, calls, and other communications from healthcare providers involved in the delivery or care of infants born with and affected by:
 - (1) A fetal alcohol spectrum disorder;
 - (2) Maternal substance abuse resulting in prenatal drug exposure to an illegal or a legal substance; or
 - (3) Withdrawal symptoms resulting from prenatal drug exposure to an illegal or a legal substance.
- (c)(1) A plan of safe care shall be developed for infants affected by:
 - (A) A fetal alcohol spectrum disorder;
 - (B) Maternal substance abuse resulting in prenatal drug exposure to an illegal or a legal substance; or
 - (C) Withdrawal symptoms resulting from prenatal drug exposure to an illegal or a legal substance.
- (2)(A) The plan of safe care shall be designed to ensure the safety and well-being of an infant following the release of the infant from the care of a healthcare provider.
- (B) A plan of safe care shall include content that addresses the health and substance use disorder treatment needs of the infant and affected family or caregiver.

History. Acts 2011, No. 1143, § 7; 2019, No. 598, § 1.

Amendments. The 2019 amendment, in the section heading, inserted “and affected by” and added “or prenatal drug exposure to an illegal drug or a legal substance”; substituted “born with and affected by” for “born and affected with” in the introductory language of (a)(1), (a)(2),

and (b); added the (a)(1)(A), (a)(2)(A), (b)(1), and (c)(1) designations; in (c)(1), substituted “A plan” for “The department shall develop a plan”, inserted “shall be developed”, and substituted “affected by” for “affected with”; and added (a)(1)(B), (a)(1)(C), (a)(2)(B), (a)(2)(C), (b)(2), (b)(3), (c)(1)(B), (c)(1)(C), (c)(2)(A), and (c)(2)(B).

SUBCHAPTER 4 — REPORTING SUSPECTED CHILD MALTREATMENT

SECTION.

12-18-401. Generally.

12-18-402. Mandated reporters.

Effective Dates. Acts 2019, No. 945, § 11: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that some juveniles in Arkansas may be unaware of their rights under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that some individuals and entities that are responsible for the welfare of a juvenile may be unaware of the rights of the juvenile under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that the creation

of the Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission will help increase awareness of a juvenile's legal rights; that independent oversight of the child welfare system in Arkansas is more than likely to result in recommendations that will further improve the procedures and operations of the child welfare system; and that this act is necessary for the preservation of the public peace, health, and safety. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-18-401. Generally.

(a) A person may immediately notify the Child Abuse Hotline if he or she:

(1) Has reasonable cause to suspect that:

(A) Child maltreatment has occurred; or

(B) A child has died as a result of child maltreatment; or

(2) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.

(b) A person who in good faith notifies the hotline in accordance with subsection (a) of this section is immune from civil and criminal liability.

History. Acts 2009, No. 749, § 1; 2019, No. 970, § 1.

Amendments. The 2019 amendment added the (a) designation; and added (b).

Cross References. Civil and criminal liability, § 12-18-107.

12-18-402. Mandated reporters.

(a) An individual listed as a mandated reporter under subsection (b) of this section shall immediately notify the Child Abuse Hotline if he or she:

(1) Has reasonable cause to suspect that a child has:

(A) Been subjected to child maltreatment;

(B) Died as a result of child maltreatment; or

(C) Died suddenly and unexpectedly; or

(2) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.

(b) The following individuals are mandated reporters under this chapter:

(1) A child care worker or foster care worker;

(2) A coroner;

(3) A day care center worker;

(4) A dentist;

- (5) A dental hygienist;
- (6) A domestic abuse advocate;
- (7) A domestic violence shelter employee;
- (8) A domestic violence shelter volunteer;
- (9) An employee of the Department of Human Services;
- (10) An employee working under contract for, or a contractor of, the Department of Human Services when acting within the scope of his or her contract or employment;
- (11) A foster parent;
- (12) A judge;
- (13) A law enforcement official;
- (14) A licensed nurse;
- (15) Medical personnel who may be engaged in the admission, examination, care, or treatment of persons;
- (16) A mental health professional or paraprofessional;
- (17) An osteopath;
- (18) A peace officer;
- (19) A physician;
- (20) A prosecuting attorney;
- (21) A resident intern;
- (22) A public or private school counselor;
- (23) A school official, including without limitation institutions of higher education;
- (24) A social worker;
- (25) A surgeon;
- (26) A teacher;
- (27) A court-appointed special advocate program staff member or volunteer;
- (28) A juvenile intake or probation officer;
- (29) A clergy member, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent the clergy member:
 - (A) Has acquired knowledge of suspected child maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or
 - (B) Received the knowledge of the suspected child maltreatment from the alleged offender in the context of a statement of admission;
- (30) An employee of a child advocacy center or a child safety center;
- (31) An attorney ad litem in the course of his or her duties as an attorney ad litem;
- (32)(A) A sexual abuse advocate or sexual abuse volunteer who works with a victim of sexual abuse as an employee of a community-based victim service or mental health agency such as Safe Places, United Family Services, Inc., or Centers for Youth and Families.
- (B) A sexual abuse advocate or sexual abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(33) A rape crisis advocate or rape crisis volunteer;

(34)(A) A child abuse advocate or child abuse volunteer who works with a child victim of abuse or maltreatment as an employee of a community-based victim service or a mental health agency such as Safe Places, United Family Services, Inc., or Centers for Youth and Families.

(B) A child abuse advocate or child abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(35) A victim/witness coordinator;

(36) A victim assistance professional or victim assistance volunteer;

(37) An employee of the Crimes Against Children Division of the Division of Arkansas State Police;

(38) An employee of a reproductive healthcare facility;

(39) A volunteer at a reproductive healthcare facility;

(40) An individual not otherwise identified in this subsection who is engaged in performing his or her employment duties with a nonprofit charitable organization other than a nonprofit hospital; and

(41) A Child Welfare Ombudsman.

(c)(1) A privilege or contract shall not prevent a person from reporting child maltreatment when he or she is a mandated reporter and required to report under this section.

(2) An employer or supervisor of an employee identified as a mandated reporter shall not prohibit an employee or a volunteer from directly reporting child maltreatment to the Child Abuse Hotline.

(3) An employer or supervisor of an employee identified as a mandated reporter shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting child maltreatment to the Child Abuse Hotline.

(d) A mandated reporter who in good faith notifies the Child Abuse Hotline in accordance with subsection (a) of this section is immune from civil and criminal liability.

History. Acts 2009, No. 749, § 1; 2009, No. 1409, § 1; 2011, No. 1143, § 8; 2013, No. 725, § 7; 2013, No. 1086, §§ 7, 8; 2015, No. 1056, § 1; 2015, No. 1211, § 3; 2017, No. 250, § 12; 2019, No. 186, § 1; 2019, No. 531, § 3; 2019, No. 945, § 5.

A.C.R.C. Notes. Acts 2019, No. 945, § 1, provided: "Legislative intent. It is the intent of the General Assembly to create a Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child wel-

fare system in Arkansas".

Amendments. The 2017 amendment deleted (a)(1)(C)(ii); and redesignated (a)(1)(C)(i) as (a)(1)(C).

The 2019 amendment by No. 186 added (d).

The 2019 amendment by No. 531, in (b)(10), substituted "or a contractor of" for "the Division of Youth Services of" and added "when acting within the scope of his or her contract or employment".

The 2019 amendment by No. 945 added (b)(41).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Breanna Trombley, Note: Criminal Law — No Stitches for Snitches: The Need for a Duty-to-Report Law in Arkansas, 34 U. Ark. Little Rock L. Rev. 813 (2012).

CASE NOTES

School Official.

Circuit court did not err in granting summary judgment in favor of a school district because it complied with The Teacher Fair Dismissal Act of 1983, § 6-17-1501 et seq., when it terminated a school principal for just and reasonable cause; the school board heard uncontested

evidence that the principal did not call the child-abuse hotline as required by this section when she became aware of the contents of a child's letter detailing that she had been touched by her grandfather and that she had "bad things" in her life. *Struble v. Blytheville Sch. Dist.*, 2017 Ark. App. 99, 516 S.W.3d 269 (2017).

SUBCHAPTER 5 — NOTICE PROCEDURES AFTER A REPORT OF SUSPECTED CHILD MALTREATMENT HAS BEEN MADE

SECTION.

12-18-508. Notice to United States military organizations of al-

leged child maltreatment — Definitions.

12-18-508. Notice to United States military organizations of alleged child maltreatment — Definitions.

(a) As used in this section:

(1) "Active duty service member" means a military member on full-time duty in the United States Army, United States Marine Corps, United States Navy, or United States Air Force;

(2) "Child" means a biological child, adopted child, stepchild, foster child, or ward of an active duty service member; and

(3) "Family advocacy program" means a congressionally mandated United States Department of Defense activity implemented through branches of the United States Armed Forces to address domestic abuse and child abuse through prevention, response, clinical assessment, treatment, and related services for active duty service members and their families.

(b) When the Child Abuse Hotline accepts a report involving as an alleged victim a child of an active duty service member, the Department of Human Services or the Division of Arkansas State Police shall immediately notify the applicable family advocacy program or other person or entity designated by the military authority for the military installation associated with the active duty service member.

(c) When the Child Abuse Hotline accepts a report involving as an alleged offender a person who is an active duty service member, the Department of Human Services or the Division of Arkansas State Police shall immediately notify the applicable family advocacy program or other person or entity designated by the military authority for the military installation associated with the active duty service member.

(d)(1) When the Child Abuse Hotline accepts a report alleging child maltreatment that occurred during an activity conducted or sanctioned by the United States Department of Defense or its subdivisions, or occurred at a facility operated by the United States Department of Defense or its subdivisions, the Department of Human Services or the Division of Arkansas State Police shall immediately notify the applicable family advocacy program or other person or entity designated by the military authority for the military installation associated with the activity or facility.

(2) Facilities covered under the notification requirement in subdivision (d)(1) of this section include without limitation all military installations and recruiting locations, as well as schools, daycares, and youth programs operated by the United States Department of Defense or its subdivisions, and schools, daycares, and youth programs that are allowed to operate on military installations, recruiting locations, or other military facilities.

(e) The notice required under this section shall include notice of the Child Abuse Hotline’s receipt of a report of suspected child maltreatment.

(f) The Department of Human Services and the Division of Arkansas State Police may promulgate rules and enter into memoranda of understanding with the United States Department of Defense and its subdivisions to ensure that the notification required under this section is provided.

History. Acts 2017, No. 528, § 1.

SUBCHAPTER 6 — INVESTIGATIVE PROCEEDINGS

| SECTION. | SECTION. |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 12-18-601. Assignment to investigative agency. | nor a fictive kin and not living in the home with the alleged victim. |
| 12-18-602. Initiation of the investigation. | |
| 12-18-606. When the alleged offender is a family member, a fictive kin, or lives in the home with the alleged victim. | 12-18-620. Release of information on pending investigation. |
| 12-18-607. When the alleged offender is neither a family member | 12-18-623. [Repealed.] |

Effective Dates. Acts 2019, No. 945, § 11: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that some juveniles in Arkansas may be unaware of their rights under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that some individuals and entities that

are responsible for the welfare of a juvenile may be unaware of the rights of the juvenile under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that the creation of the Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission will help increase awareness of a juvenile’s legal

rights; that independent oversight of the child welfare system in Arkansas is more than likely to result in recommendations that will further improve the procedures and operations of the child welfare system; and that this act is necessary for the

preservation of the public peace, health, and safety. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-18-601. Assignment to investigative agency.

(a)(1) If a report of child maltreatment is accepted by the Child Abuse Hotline, an investigation shall be conducted under procedures established by the Department of Human Services.

(2) The procedures established by the Department of Human Services shall require the:

(A) Assignment of a report of child maltreatment to the Department of Human Services or the Division of Arkansas State Police as the investigating agency;

(B) Assignment of a report of child maltreatment to the Division of Arkansas State Police if the report involves:

(i) Severe maltreatment;

(ii) A person, agency, corporation, or partnership that provides substitute care for a child who is in the custody of the Department of Human Services; or

(iii) A person, agency, corporation, or partnership that provides substitute care for a child who is in the custody of an employee of the Department of Human Services or another person who resides in the home of an employee of the Department of Human Services; and

(C) Assignment of a report of child maltreatment that qualifies for triage procedures that are developed and implemented under this section and as prescribed by triage procedures in lieu of an assignment for investigation by the Department of Human Services or the Division of Arkansas State Police.

(b)(1)(A) After the assignment of a report of child maltreatment, the investigating agency shall initiate an investigation as provided under this subchapter.

(B) After initiating the investigation and interviewing the alleged victim, the investigating agency shall review the report of child maltreatment to determine if the investigation should be administratively closed under § 12-18-702 without complying with the requirements of this subchapter regarding a complete investigation.

(C) If an investigation is not administratively closed under § 12-18-702, the investigating agency shall comply with the requirements of this subchapter regarding a complete investigation.

(2)(A) The investigating agency shall administratively close an investigation under procedures that are established by the Department of Human Services.

(B) The procedures established by the Department of Human Services shall require the:

(i) Closure of an investigation if there is no evidence to support the report of child maltreatment other than the report made to the Child Abuse Hotline;

(ii) Closure of an investigation if there is insufficient detail to investigate the report of child maltreatment;

(iii)(a) Closure of an investigation that is based on an allegation made by an anonymous reporter if there is no evidence to corroborate the report of child maltreatment after the investigating agency has conducted a preliminary investigation to determine whether there is any evidence to corroborate the report of child maltreatment.

(b) A preliminary investigation shall include:

(1) An interview with the alleged victim;

(2) A visit to the home of the alleged victim if appropriate given the type of child maltreatment alleged; and

(3) Evidence from a collateral witness;

(iv) Closure of an investigation if:

(a) There has not been an additional report of abuse or neglect that has been committed by the alleged offender who is the subject of the current report;

(b) The investigator reviews the prior history of child maltreatment related to the family of the child and to the offender and determines that the health and safety of the child can be assured without further investigation by the Department of Human Services or the Division of Arkansas State Police; and

(c) The investigator determines that abuse or neglect of the child did not occur; and

(v) Approval of the:

(a) Director of the Division of Children and Family Services of the Department of Human Services or his or her designee for the administrative closure of an investigation that is conducted by the Department of Human Services; or

(b) Director of the Division of Arkansas State Police or his or her designee for the administrative closure of an investigation conducted by the Division of Arkansas State Police.

(c)(1) The Department of Human Services and the Division of Arkansas State Police may develop and implement triage procedures for accepting and documenting reports of child maltreatment of a child not at risk of imminent harm.

(2) The Department of Human Services and the Division of Arkansas State Police shall not implement this section until rules necessary to carry out this subsection have been promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) With regard to the procedures established in accordance with subsections (a) and (b) of this section, the Department of Human Services shall assess the safety of a child upon the receipt of an accepted child maltreatment report.

(2) The assessment under subdivision (d)(1) of this section shall include each underlying issue or additional child maltreatment concern

that may not have been identified in the original Child Abuse Hotline report.

(e) The Department of Human Services shall work with families related to an accepted child maltreatment report to remedy the conditions or issues that resulted in the child maltreatment report.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 10; 2015, No. 1004, § 10; 2015, No. 1215, § 3; 2019, No. 802, § 3.

A.C.R.C. Notes. Acts 2019, No. 802, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) All members of society desire the safety of all children;

"(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

"(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary lifestyle and lack of physical activity for children today, which is often encouraged by parents and guardians, including without limitation by insisting on driving their children to school;

"(4) As measured by incidences of mental health difficulties, the over-supervised youth of today experience more difficulties when they reach adulthood than earlier generations;

"(5) Earlier generations learned resilience by walking, bicycling, playing, helping, and solving problems without constant adult intervention;

"(6) Parents and guardians are often in the best position to weigh the risk and make decisions concerning the safety of children under their care, including without limitation where their child may go, with whom, and when; and

"(7) Parents and guardians who have done nothing more than briefly and safely permitted their children to remain unsupervised should not be subject to investigation and possible prosecution as it

causes unnecessary governmental intrusion and diversion of valuable public resources.

"(b) It is the intent of the General Assembly that this act:

"(1) Protect and promote the inherent right of a parent or guardian to raise his or her children;

"(2) Protect the decision of a parent or a guardian to grant his or her children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home; and

"(3) Ensure that valuable public resources are used most effectively to protect children by providing a secondary review to ensure that:

"(A) Calls to the Child Abuse Hotline are properly accepted;

"(B) Child maltreatment investigations are closed when the results of the investigation indicate that the allegations lack merit; and

"(C) Only the names of offenders who pose a risk to a vulnerable population are placed on the Child Maltreatment Central Registry."

Amendments. The 2019 amendment rewrote (a) and (b); deleted former (c) and redesignated the remaining subsections accordingly; deleted "if an appropriate referral is made to a community organization or voluntary preventive service" following "imminent harm" in (c)(1); substituted "established in accordance with subsections (a) and (b)" for "described in subdivisions (d)(1) and (2)" in (d)(1); and updated an internal reference in (d)(2).

12-18-602. Initiation of the investigation.

(a) The Department of Human Services and the Division of Arkansas State Police shall cause an investigation to be made upon receiving initial notification of suspected child maltreatment or notification of a child death.

(b)(1) All investigations shall begin within seventy-two (72) hours.

(2) However, the investigation shall begin within twenty-four (24) hours if:

(A) The allegation is severe maltreatment, excluding an allegation:

(i) Of sexual abuse if the most recent allegation of sexual abuse was more than one (1) year ago or the alleged victim does not currently have contact with the alleged offender;

(ii) Of abandonment and the child is in a facility;

(iii) Of cuts, welts, bruises, or suffocation if the most recent allegation was more than one (1) year ago and the alleged victim is in the custody of the Department of Human Services; or

(iv) In which the alleged victim is in a facility and does not currently have contact with the alleged offender;

(B) The allegation is that a child has been subjected to neglect as defined in § 12-18-103(14)(B); or

(C) A child has died suddenly and unexpectedly.

(c) At the initial time of contact with the alleged offender, the person conducting the investigation shall advise the alleged offender of the allegations made against the alleged offender in a manner that is consistent with the laws protecting the rights of the person who made the report.

(d) The Department of Human Services and the Division of Arkansas State Police shall:

(1) Develop policy and procedures to follow when a child dies suddenly and unexpectedly to use in a child death investigation;

(2) Determine during the Department of Human Services' and the Division of Arkansas State Police's investigation whether the child's death was caused by child maltreatment; and

(3) Assess the home to ensure the safety of surviving siblings or children in the home.

(e) Upon initiation of the investigation, the primary focus of the investigation shall be whether or not the alleged offender has access to children and whether or not children are at risk such that children need to be protected.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 11; 2015, No. 1004, § 11; 2015, No. 1026, § 5; 2015, No. 1211, § 4; 2017, No. 250, § 13; 2019, No. 881, § 2. deleted (b)(2)(C)(ii); and redesignated (b)(2)(C)(i) as (b)(2)(C). The 2019 amendment inserted "Of" in (b)(2)(A)(i) through (b)(2)(A)(iii); and added (b)(2)(A)(iv).

Amendments. The 2017 amendment

12-18-606. When the alleged offender is a family member, a fictive kin, or lives in the home with the alleged victim.

If the alleged offender is a family member, fictive kin, or lives in the home with the alleged victim, an investigation under this chapter shall seek to ascertain:

(1) The existence, cause, nature, and extent of the child maltreatment;

- (2) The existence and extent of previous injuries;
- (3) The identity of the person responsible for the child maltreatment;
- (4) The names and conditions of other children in the home;
- (5) The circumstances of the parents or caretakers of the child;
- (6) The environment where the child resides;
- (7) The relationship of the child or children with the parents or caretakers; and
- (8) All other pertinent data.

History. Acts 2009, No. 749, § 1; 2019, No. 881, § 3. inserted “a fictive kin” in the section heading and made a similar change in the

Amendments. The 2019 amendment introductory language.

12-18-607. When the alleged offender is neither a family member nor a fictive kin and not living in the home with the alleged victim.

If the alleged offender is not a family member living in the home with the alleged victim, the investigation under this chapter shall seek to ascertain:

- (1) The existence, cause, nature, and extent of child maltreatment;
- (2) The identity of the person responsible for the child maltreatment;
- (3) The existence and extent of previous child maltreatment perpetrated by the alleged offender;
- (4) If the report is determined to be true, the names and conditions of any children of the alleged offender and whether these children have been maltreated or are at risk of child maltreatment unless the investigating agency has determined that there is no indication of risk to the children;
- (5) If the report is determined to be true and is a report of sexual abuse, sexual contact, or sexual exploitation, an assessment of any other children previously or currently under the care of the alleged offender, to the extent practical, and whether these children have been maltreated or are at risk of maltreatment unless the investigating agency has determined that there is no indication of risk to the children; and
- (6) All other pertinent and relevant data.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 13; 2015, No. 1026, § 6; 2019, No. 881, § 4.

Amendments. The 2019 amendment substituted “neither a family member nor a fictive kin and” for “not a family member

or” in the section heading; deleted “nor” following “family member” in the introductory language; and added “unless the investigating agency has determined that there is no indication of risk to the children” at the end of (4) and (5).

12-18-620. Release of information on pending investigation.

(a) Information on a pending investigation under this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify a person who made a report under this chapter unless a

court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of child maltreatment, a juvenile offender, or an underaged juvenile offender.

(e) Information on a pending investigation, including protected health information, shall be released upon request to:

(1) The department, excluding pending investigations on an employee or spouse of the Division of Children and Family Services;

(2) Law enforcement;

(3) The prosecuting attorney;

(4) The responsible multidisciplinary team;

(5) The attorney ad litem of the alleged victim or offender;

(6) A court-appointed special advocate volunteer for the alleged victim or offender;

(7) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(8) Any department division director or facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;

(9) Any facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;

(10) Any family advocacy program or other person designated by the military authority for the military installation receiving notice of a Child Abuse Hotline report under § 12-18-508;

(11)(A) Federal, state, and local government entities, or any agent of such entities, that have a need for such information to carry out their responsibilities under law to protect children from child maltreatment.

(B) Acting in their official capacities under law to protect children, disclosure may be made to individual United States and Arkansas senators and representatives and their authorized staff members, but only if they agree not to permit any redisclosure of the information except for a legitimate state purpose to protect children from child maltreatment.

(C) However, disclosure shall not be made to any committee or legislative body;

(12) The attorney ad litem and court-appointed special advocate of a juvenile who has an open dependency-neglect case, if the alleged offender or the minor victim resides in the home or in the proposed placement location for the juvenile that is not a licensed foster home, adoptive home, shelter, or facility; and

(13) A Child Welfare Ombudsman.

(f) Information on a pending investigation, including protected health information, may be released to or disclosed in a circuit court child custody case or similar case if:

(1) No seventy-two-hour hold has been exercised under this chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Written notice of intent to request release or disclosure is provided to the investigating agency at least five (5) days before the date for release or disclosure;

(3) The investigating agency has the opportunity to appear before the court and be heard on the issue of release or disclosure;

(4) The information gathered by the investigative agency is necessary for the determination of an issue before the court;

(5) Waiting until completion of the investigation will jeopardize the health or safety of the child in the custody case;

(6) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and

(7) Release or disclosure of the information will not compromise a criminal investigation.

(g) Information on a pending investigation, including protected health information, may be released to or disclosed in the circuit court if the victim or alleged offender has an open dependency-neglect or family in need of services case before the circuit court.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 13; 2015, No. 1026, § 8; 2017, No. 250, § 14; 2017, No. 528, § 2; 2017, No. 713, § 5; 2017, No. 803, § 2; 2019, No. 590, § 1; 2019, No. 945, § 6.

A.C.R.C. Notes. Acts 2019, No. 945, § 1, provided: "Legislative intent. It is the intent of the General Assembly to create a Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child welfare system in Arkansas".

Amendments. The 2017 amendment by No. 250, in (d), inserted "child" preced-

ing "maltreatment" and substituted "offender" for "aggressor" at the end.

The 2017 amendment by No. 528 inserted (e)(10); and redesignated former (e)(10) as (e)(11).

The 2017 amendment by No. 713 redesignated (e)(10)(A) as (e)(10)(A)(i) [now (e)(11)(A)(i)]; and added (e)(10)(A)(ii) [now (e)(11)(A)(ii)].

The 2017 amendment by No. 803 added (e)(11) [now (e)(12)].

The 2019 amendment by No. 590 rewrote (e)(11).

The 2019 amendment by No. 945 added (e)(13).

12-18-623. [Repealed.]

Publisher's Notes. This section, concerning no merit investigations, was re-

pealed by Acts 2019, No. 802, § 4, effective July 24, 2019. The section was

derived from Acts 2015, No. 1212, § 1;
2017, No. 250, § 15.

SUBCHAPTER 7 — INVESTIGATIVE FINDINGS

SECTION.

- 12-18-702. Investigative determination.
- 12-18-709. Confidentiality.
- 12-18-710. Release of information on true
investigative determination
pending due process.

SECTION.

- 12-18-713. Reports on overturned true
determinations.

Effective Dates. Acts 2019, No. 945, § 11: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that some juveniles in Arkansas may be unaware of their rights under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that some individuals and entities that are responsible for the welfare of a juvenile may be unaware of the rights of the juvenile under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that the creation

of the Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission will help increase awareness of a juvenile’s legal rights; that independent oversight of the child welfare system in Arkansas is more than likely to result in recommendations that will further improve the procedures and operations of the child welfare system; and that this act is necessary for the preservation of the public peace, health, and safety. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-18-702. Investigative determination.

(a) Upon completion of an investigation under this chapter, the Department of Human Services and the Division of Arkansas State Police shall determine whether the allegations of child maltreatment are:

- (1)(A) Unsubstantiated.
(B) An unsubstantiated determination shall be entered when the allegation is not supported by a preponderance of the evidence;
- (2)(A) True.
(B) A true determination shall be entered when the allegation is supported by a preponderance of the evidence;
- (3)(A) True but exempted.
(B) A determination of true but exempted is a true determination where the offender’s name shall not be placed in the Child Maltreatment Central Registry, shall be entered if:
(i) A parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child, but in lieu of treatment the child is being furnished with treatment by spiritual means alone, through prayer, in accordance with a recognized religious method of healing by an accredited practitioner;

(ii) The offender is an underaged juvenile offender;
(iii) The report was true for neglect as defined under § 12-18-103(14)(B); or

(iv) The offender is a juvenile less than fourteen (14) years of age at the time of the offense; or

(4)(A) Inactive.

(B) If the investigation cannot be completed, the investigation shall be determined incomplete and placed in inactive status.

(b) An investigation of a report of child maltreatment that is closed under § 12-18-601 shall be documented as administratively closed without a determination of whether the allegation is unsubstantiated, true, true but exempt, or inactive.

(c)(1) If the Department of Human Services or the Division of Arkansas State Police determines that a report of child maltreatment is true, the Department of Human Services shall determine whether the offender may pose a risk of maltreatment to a vulnerable population, including without limitation children, the elderly, persons with a disability, and persons with a mental health illness.

(2)(A) The Department of Human Services shall establish procedures to determine the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment.

(B) The procedures of the Department of Human Services shall require the following factors to be considered in the determination of whether an offender may pose a risk of maltreatment to a vulnerable population:

(i) The severity of the child maltreatment;

(ii) The nature and severity of an injury or other adverse impact caused by the child maltreatment;

(iii) The access the offender has to a vulnerable population;

(iv) Any previous substantiated child maltreatment findings against the offender;

(v) A subsequent report of child maltreatment alleged against the offender; and

(vi) The criminal history of the offender.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 14; 2013, No. 1006, § 16; 2015, No. 1004, § 19; 2019, No. 802, § 5.

A.C.R.C. Notes. Acts 2019, No. 802, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) All members of society desire the safety of all children;

"(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

"(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary

lifestyle and lack of physical activity for children today, which is often encouraged by parents and guardians, including without limitation by insisting on driving their children to school;

"(4) As measured by incidences of mental health difficulties, the over-supervised youth of today experience more difficulties when they reach adulthood than earlier generations;

"(5) Earlier generations learned resilience by walking, bicycling, playing, helping, and solving problems without constant adult intervention;

"(6) Parents and guardians are often in the best position to weigh the risk and

make decisions concerning the safety of children under their care, including without limitation where their child may go, with whom, and when; and

“(7) Parents and guardians who have done nothing more than briefly and safely permitted their children to remain unsupervised should not be subject to investigation and possible prosecution as it causes unnecessary governmental intrusion and diversion of valuable public resources.

“(b) It is the intent of the General Assembly that this act:

“(1) Protect and promote the inherent right of a parent or guardian to raise his or her children;

“(2) Protect the decision of a parent or a guardian to grant his or her children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home; and

“(3) Ensure that valuable public resources are used most effectively to protect children by providing a secondary review to ensure that:

“(A) Calls to the Child Abuse Hotline are properly accepted;

“(B) Child maltreatment investigations are closed when the results of the investigation indicate that the allegations lack merit; and

“(C) Only the names of offenders who pose a risk to a vulnerable population are placed on the Child Maltreatment Central Registry.”

Amendments. The 2019 amendment added (b) and (c) and designated the former section as (a); added (a)(3)(A); redesignated former (a)(2)(C) as (a)(3)(B); substituted “is a true determination where” for “which means that” in (a)(3)(B); inserted “at the time of the offense” in (a)(3)(B)(iv); and redesignated former (a)(3)(A) and (a)(3)(B) as (a)(4)(A) and (a)(4)(B).

12-18-703. Notice generally.

CASE NOTES

Failure to Preserve.

Although appellant did not receive timely notice of the true finding of abuse and an opportunity to be heard before his name was placed on the Child Maltreatment Central Registry, appellant’s due

process argument was not preserved for appeal as he failed to raise it before the ALJ or the circuit court. *Smith v. Ark. Dep’t of Human Servs.*, 2018 Ark. App. 438, 559 S.W.3d 291 (2018).

12-18-709. Confidentiality.

(a) Notice of an investigative determination under this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services and the Division of Arkansas State Police shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by

the Department of Human Services and the Division of Arkansas State Police.

(d)(1) Notification of the investigative determination of severe maltreatment shall be provided to the appropriate law enforcement agency and the prosecuting attorney.

(2) The prosecuting attorney and law enforcement may provide written notice to the Department of Human Services and the Division of Arkansas State Police that the Department of Human Services and the Division of Arkansas State Police do not need to provide notice of investigative determinations.

(3) Upon receiving the notification, the Department of Human Services and the Division of Arkansas State Police shall not be required to provide notification of the investigative determination.

(e) The Department of Human Services and the Division of Arkansas State Police shall notify each subject of the report of the investigative determination whether true or unsubstantiated.

(f) The Department of Human Services and the Division of Arkansas State Police shall notify the alleged offender's legal parents, legal guardians, and foster parents of the investigative determination if the:

(1) Investigative determination is unsubstantiated; and

(2) Alleged offender is:

(A) Under eighteen (18) years of age; and

(B) In foster care.

(g) The Department of Human Services and the Division of Arkansas State Police shall notify any family advocacy program or other person or entity designated by the military authority for the military installation to which notice must be given of child maltreatment investigations under § 12-18-508 of the investigation determination whether true or unsubstantiated.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 17; 2015, No. 1004, § 24; 2017, No. 528, § 3. **Amendments.** The 2017 amendment added (g).

12-18-710. Release of information on true investigative determination pending due process.

(a) Information on a completed true investigation pending due process as referenced in this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile offender.

(e) Information on a completed investigation, including protected health information, pending due process shall be released upon request to:

- (1) The alleged offender;
- (2) The department, excluding pending investigations on an employee or spouse of the Division of Children and Family Services;
- (3) Law enforcement;
- (4) The prosecuting attorney;
- (5) The responsible multidisciplinary team;
- (6) The attorney ad litem for the victim or offender;
- (7) A court-appointed special advocate volunteer for the victim or offender;
- (8) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;
- (9) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this chapter;
- (10) Any facility director receiving notice of a Child Abuse Hotline report under this chapter;
- (11) Any family advocacy program or other person designated by the military authority for the military installation receiving notice of a Child Abuse Hotline report under § 12-18-508;
- (12)(A) Federal, state, and local government entities, or any agent of such entities, that have a need for such information to carry out their responsibilities under law to protect children from child maltreatment.
- (B) Acting in their official capacities under law to protect children, disclosure may be made to individual United States and Arkansas senators and representatives and their authorized staff members, but only if they agree not to permit any redisclosure of the information except for a legitimate state purpose to protect children from child maltreatment.
- (C) However, disclosure shall not be made to any committee or legislative body;
- (13) The attorney ad litem and court-appointed special advocate of a juvenile who has an open dependency-neglect case, if the alleged offender or the minor victim resides in the home or in the proposed placement location for the juvenile that is not a licensed foster home, adoptive home, shelter, or facility; and

(14) A Child Welfare Ombudsman.

(f) Information on a true investigative determination, including protected health information, may be released to or disclosed in a circuit court child custody case or similar case if:

(1) No seventy-two-hour hold has been exercised under this chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Written notice of intent to request release or disclosure is provided to the investigating agency at least five (5) days before the date for release or disclosure;

(3) The investigating agency has the opportunity to appear before the court and be heard on the issue of release or disclosure;

(4) The information gathered by the investigative agency is necessary for the determination of an issue before the court;

(5) Waiting until completion of due process will jeopardize the health or safety of the child in the custody case;

(6) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and

(7) Release or disclosure of the information will not compromise a criminal investigation.

(g) Information on a true investigative determination, including protected health information, may be released to or disclosed in the circuit court if the victim or offender has an open dependency-neglect or family in need of services case before the circuit court.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 18; 2015, No. 1026, § 12; 2017, No. 528, § 4; 2017, No. 713, § 6; 2017, No. 803, § 3; 2019, No. 590, § 2; 2019, No. 945, § 7

A.C.R.C. Notes. Acts 2019, No. 945, § 1, provided: “Legislative intent. It is the intent of the General Assembly to create a Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child welfare system in Arkansas”.

Amendments. The 2017 amendment by No. 528 inserted (e)(11); and redesignated former (e)(11) as (e)(12).

The 2017 amendment by No. 713 redesignated (e)(11)(A) as (e)(11)(A)(i) [now

(e)(12)(A)(i)]; added (e)(11)(A)(ii) [now (e)(12)(A)(ii)]; and made a stylistic change.

The 2017 amendment by No. 803 added (e)(12) [now (e)(13)].

The 2019 amendment by No. 590 redesignated (e)(12)(A)(i) and (e)(12)(B) as (e)(12)(B) and (e)(12)(C); added (e)(12)(A); deleted (e)(12)(A)(ii); and, in (e)(12)(B), inserted “under law to protect children, disclosure may be made to” and added “except for a legitimate state purpose to protect children from child maltreatment”.

The 2019 amendment by No. 945 added (e)(14).

12-18-713. Reports on overturned true determinations.

(a)(1) The Department of Human Services and the Division of Arkansas State Police shall submit two (2) reports annually on true determinations made under this chapter that are administratively or judicially overturned to the Senate Interim Committee on Children and

Youth and the House Committee on Aging, Children and Youth, Legislative and Military Affairs.

(2) The first report shall be submitted on June 1 and the second report shall be submitted on December 1.

(b) A report submitted under subsection (a) of this section shall include:

- (1) Data on overturned true determinations by county; and
- (2) Any other information requested by the Senate Interim Committee on Children and Youth and the House Committee on Aging, Children and Youth, Legislative and Military Affairs.

History. Acts 2017, No. 1025, § 1.

SUBCHAPTER 8 — ADMINISTRATIVE HEARINGS

| SECTION. | SECTION. |
|------------------------------------------------------------------------------------|--------------------------------------------------|
| 12-18-812. Preliminary administrative hearing. | 12-18-815. Adjudication of allegations and risk. |
| 12-18-813. Notice of investigative determination upon satisfaction of due process. | |

12-18-801. Time to complete administrative hearing.

CASE NOTES

Dismissal Proper.

Office of Appeals and Hearings properly dismissed petitioner’s administrative appeal of the decision to place his name on the Child Maltreatment Central Registry because he failed to provide a file-marked copy of the final disposition of his criminal proceeding within 30 days of entry, as

required by this section, despite the ALJ’s letter specifically informing petitioner’s counsel of the statutory requirement; there is no “good faith” exception for failure to comply with the statutory requirement. Ark. Dep’t of Human Servs. v. Salcido, 2018 Ark. App. 559, 567 S.W.3d 510 (2018).

12-18-804. Defenses and affirmative defenses.

CASE NOTES

Mental Capacity.

Father placed his mental capacity at issue by arguing that due to lack of sleep, stress, and other factors, his brain functioned differently than it would if it were not experiencing those unusual conditions, and he was unable to adequately supervise his child; the Child Maltreat-

ment Act specifically excludes lack of capacity caused by mental disease or defect as an affirmative defense, and the administrative law judge’s reference to the Act was not error under the circumstances. W.N. v. Ark. Dep’t of Human Servs., 2018 Ark. App. 346, 552 S.W.3d 483 (2018).

12-18-807. Administrative judgments and adjudications.**CASE NOTES****Collateral Estoppel.**

Administrative law judge did not err in finding that a mother was precluded from relitigating maltreatment issues since they had been previously adjudicated in a dependency-neglect action; the “actually litigated” element of collateral estoppel was satisfied. The dependency-neglect ad-

judication was issued by a court of competent jurisdiction, and the adjudication involved a question to be determined by the Office of Appeals and Hearings of the Department of Human Services. *Ogborn v. Ark. Dep’t of Human Servs.*, 2017 Ark. App. 600, 532 S.W.3d 621 (2017).

12-18-812. Preliminary administrative hearing.

(a) If the Department of Human Services and the Division of Arkansas State Police are unable to notify an offender of an investigative determination under this chapter, the Department of Human Services and the Division of Arkansas State Police may request a preliminary administrative hearing to allow provisional placement of the offender’s name in the Child Maltreatment Central Registry.

(b) The Department of Human Services and the Division of Arkansas State Police must prove that the Department of Human Services and the Division of Arkansas State Police diligently attempted to notify the alleged offender of the investigative determination, specifically, that the Department of Human Services and the Division of Arkansas State Police used a reasonable degree of care to ascertain the offender’s whereabouts and notify the offender.

(c)(1) The Department of Human Services and the Division of Arkansas State Police shall notify the administrative law judge of any known criminal action related to the investigation.

(2) A preliminary administrative hearing shall proceed even if:

(A) There is an ongoing criminal or delinquency investigation regarding the occurrence that is the subject of the child maltreatment investigation; or

(B) Criminal or delinquency charges are filed or will be filed regarding the occurrence that is the subject of the child maltreatment investigation.

(d) At the preliminary administrative hearing, the administrative law judge shall determine whether a *prima facie* case exists that:

(1) The offender committed child maltreatment, that is, whether a preponderance of the evidence supports a finding that the allegations are true; and

(2) A child, elderly person, person with a disability, or person with a mental illness may be at risk of maltreatment.

(e) If the administrative law judge determines there is not a *prima facie* case, the Department of Human Services and the Division of Arkansas State Police shall not at that time place the alleged offender’s name in the registry but may continue to provide notice to the alleged offender for a regular administrative hearing.

(f) If the administrative law judge determines there is a prima facie case, the administrative law judge shall direct that the offender's name shall be provisionally placed in the registry.

(g)(1) If an offender's name is provisionally placed in the registry the alleged offender may request a regular administrative hearing within thirty (30) days of receipt of the notice of the investigative determination.

(2) Failure to timely request a regular administrative hearing shall result in a finding by the administrative law judge that the provisional designation shall be removed and the offender's name shall be officially placed in the registry.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 26; 2015, No. 1004, § 29; 2019, No. 802, § 6.

A.C.R.C. Notes. Acts 2019, No. 802, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) All members of society desire the safety of all children;

"(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

"(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary lifestyle and lack of physical activity for children today, which is often encouraged by parents and guardians, including without limitation by insisting on driving their children to school;

"(4) As measured by incidences of mental health difficulties, the over-supervised youth of today experience more difficulties when they reach adulthood than earlier generations;

"(5) Earlier generations learned resilience by walking, bicycling, playing, helping, and solving problems without constant adult intervention;

"(6) Parents and guardians are often in the best position to weigh the risk and make decisions concerning the safety of children under their care, including without limitation where their child may go, with whom, and when; and

"(7) Parents and guardians who have done nothing more than briefly and safely

permitted their children to remain unsupervised should not be subject to investigation and possible prosecution as it causes unnecessary governmental intrusion and diversion of valuable public resources.

"(b) It is the intent of the General Assembly that this act:

"(1) Protect and promote the inherent right of a parent or guardian to raise his or her children;

"(2) Protect the decision of a parent or a guardian to grant his or her children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home; and

"(3) Ensure that valuable public resources are used most effectively to protect children by providing a secondary review to ensure that:

"(A) Calls to the Child Abuse Hotline are properly accepted;

"(B) Child maltreatment investigations are closed when the results of the investigation indicate that the allegations lack merit; and

"(C) Only the names of offenders who pose a risk to a vulnerable population are placed on the Child Maltreatment Central Registry."

Amendments. The 2019 amendment, in (d)(2), inserted the second occurrence of "a" and substituted "maltreatment" for "harm".

12-18-813. Notice of investigative determination upon satisfaction of due process.

(a)(1) Due process has been satisfied when:

(A) The alleged offender eighteen (18) years of age or older at the time the act or omission occurred was provided written notice of the true investigative determination as required by this chapter but failed to timely request an administrative hearing;

(B) The alleged offender eighteen (18) years of age or older at the time the act or omission occurred timely requested an administrative hearing and a decision has been issued by the administrative law judge; or

(C) The alleged offender was a child at the time the act or omission occurred and the child or his or her legal parent or legal guardian waived the administrative hearing or the administrative law judge issued a decision.

(2) Upon satisfaction of due process, if the investigative determination is true, the alleged offender's name shall be placed in the Child Maltreatment Central Registry.

(b)(1) Upon satisfaction of due process and if the investigative determination is true, the Department of Human Services and the Division of Arkansas State Police shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report including the name and relationship of the offender to the maltreated child and the services offered or provided by the Department of Human Services and the Division of Arkansas State Police to the child.

(2) Upon completion of due process, the Department of Human Services and the Division of Arkansas State Police shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report indicating the Department of Human Services' and the Division of Arkansas State Police's true investigative determination on any child ten (10) years of age or older who is named as the offender in a true report and the services offered or provided by the Department of Human Services and the Division of Arkansas State Police to the juvenile offender.

(3) Any local educational agency receiving information under this section from the Department of Human Services and the Division of Arkansas State Police shall make this information, if it is a true report, confidential and a part of the child's permanent educational record and shall treat information under this section as educational records are treated under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(c)(1) Upon satisfaction of due process and if the investigative determination is true, if the offender is engaged in child-related activities or employment, works with the elderly, an individual with a disability, or an individual with a mental illness, or is a juvenile and the Department of Human Services or the Division of Arkansas State Police has determined that children, the elderly, or individuals with a disability or mental illness under the care of the offender appear to be at risk of maltreatment by the offender, the Department of Human Services or the Division of Arkansas State Police may notify the following of the investigative determination:

- (A) The offender's employer;
- (B) A school superintendent, principal, or a person in an equivalent position where the offender is employed;
- (C) A person in charge of a paid or volunteer activity;
- (D) Any licensing or registering authority to the extent necessary to carry out its official responsibilities; and
- (E) The custodial parent, custodian, or guardian of a child who is or may be currently cared for or supervised by the offender.

(2) The Department of Human Services and the Division of Arkansas State Police shall promulgate rules that shall ensure that notification required under this subsection is specifically approved by a responsible manager in the Department of Human Services or the Division of Arkansas State Police before the notification is made.

(3) If the Department of Human Services and the Division of Arkansas State Police later determine that there is not a preponderance of the evidence indicating that children under the care of the alleged offender appear to be at risk, the Department of Human Services and the Division of Arkansas State Police shall immediately notify the previously notified person or entity of that information.

(4)(A) Upon satisfaction of due process, the Department of Human Services and the Division of Arkansas State Police may notify the entity or person in charge of the investigative determination if:

- (i) The investigative determination is true; and
- (ii) The alleged offender is a juvenile who is in a setting or circumstance where other children appear to be at risk.

(B) The Department of Human Services and the Division of Arkansas State Police shall promulgate rules to ensure that notification required under this section is specifically approved by a responsible manager in the Department of Human Services or the Division of Arkansas State Police before notification is made.

(C) If the Department of Human Services and the Division of Arkansas State Police later determine that there is no preponderance of the evidence indicating that children appear to be at risk, the Department of Human Services and the Division of Arkansas State Police shall immediately notify the previously notified entity or person of that information.

(d) Upon satisfaction of due process, if the victim or offender is in foster care, notification of the investigative determination shall be provided to:

(1) The legal parents, legal guardians, and current foster parents of the victim; and

(2) The attorney ad litem and court-appointed special advocate volunteer for the victim or offender.

(e) Upon satisfaction of due process, notification of the investigative determination shall be provided to the following:

(1) All subjects of the report; and

(2) As required by § 21-15-110, the employer of any offender if the offender is in a designated position with a state agency.

(f) Upon satisfaction of due process, the Department of Human Services and the Division of Arkansas State Police shall confirm the investigative determination to the following, upon request:

- (1) The responsible multidisciplinary team;
- (2) The juvenile division of circuit court, if the victim or offender has an open dependency-neglect or family in need of services case;
- (3) The attorney ad litem for a child who is named as the victim or offender;
- (4) The Court Appointed Special Advocates volunteer for a child named as the alleged victim or offender;
- (5) Any licensing or registering authority if it is necessary to carry out its official responsibilities;
- (6) Any Department of Human Services division director or facility director receiving notice of a Child Abuse Hotline report under this subchapter;
- (7) The attorney ad litem and Court Appointed Special Advocates volunteer for all other children in the same foster home if the child maltreatment occurred in a foster home;
- (8) The attorney ad litem and Court Appointed Special Advocates volunteer for any child in foster care when the alleged offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or Court Appointed Special Advocates volunteer's client;
- (9) A child safety center if involved in the investigation;
- (10) Law enforcement;
- (11) The prosecuting attorney in cases of severe maltreatment;
- (12) Any family advocacy program or other person designated by the military authority for the military installation receiving notice of a Child Abuse Hotline report under § 12-18-508; and
- (13) The attorney ad litem and court-appointed special advocate of a juvenile who has an open dependency-neglect case, if the alleged offender or the minor victim resides in the home or in the proposed placement location for the juvenile that is not a licensed foster home, adoptive home, shelter, or facility.

(g) Upon satisfaction of due process, the Department of Human Services and the Division of Arkansas State Police may notify the persons or entities listed in subsection (f) of this section of the investigative determination if the Department of Human Services and the Division of Arkansas State Police determine that the notification is necessary to accomplish the purposes of § 12-18-102.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 22; 2013, No. 1006, § 27; 2015, No. 1004, § 30; 2015, No. 1026, § 14; 2017, No. 528, § 5; 2017, No. 803, § 4; 2019, No. 531, § 4.

Amendments. The 2017 amendment by No. 528 added (f)(12).

The 2017 amendment by No. 803 added (f)(13).

The 2019 amendment added (c)(1)(E).

12-18-815. Adjudication of allegations and risk.

(a) In an administrative hearing held under this chapter, an administrative law judge shall determine whether:

(1) A preponderance of the evidence supports a finding that an allegation of child maltreatment is true; and

(2) The Department of Human Services abused its discretion in determining that an offender may pose a risk of maltreatment to a vulnerable population that includes without limitation, children, the elderly, persons with a disability, and persons with a mental health illness.

(b) An administrative law judge shall direct the name of an offender to be placed on the Child Maltreatment Central Registry if a preponderance of the evidence supports a finding that:

(1) An allegation of child maltreatment is true; and

(2) The department did not abuse its discretion in determining that the offender may pose a risk of maltreatment to a vulnerable population.

History. Acts 2019, No. 802, § 7.

A.C.R.C. Notes. Acts 2019, No. 802, § 1, provided: “Legislative findings and intent.

“(a) The General Assembly finds that:

“(1) All members of society desire the safety of all children;

“(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

“(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary lifestyle and lack of physical activity for children today, which is often encouraged by parents and guardians, including without limitation by insisting on driving their children to school;

“(4) As measured by incidences of mental health difficulties, the over-supervised youth of today experience more difficulties when they reach adulthood than earlier generations;

“(5) Earlier generations learned resilience by walking, bicycling, playing, helping, and solving problems without constant adult intervention;

“(6) Parents and guardians are often in the best position to weigh the risk and make decisions concerning the safety of children under their care, including without limitation where their child may go, with whom, and when; and

“(7) Parents and guardians who have done nothing more than briefly and safely permitted their children to remain unsupervised should not be subject to investigation and possible prosecution as it causes unnecessary governmental intrusion and diversion of valuable public resources.

“(b) It is the intent of the General Assembly that this act:

“(1) Protect and promote the inherent right of a parent or guardian to raise his or her children;

“(2) Protect the decision of a parent or a guardian to grant his or her children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home; and

“(3) Ensure that valuable public resources are used most effectively to protect children by providing a secondary review to ensure that:

“(A) Calls to the Child Abuse Hotline are properly accepted;

“(B) Child maltreatment investigations are closed when the results of the investigation indicate that the allegations lack merit; and

“(C) Only the names of offenders who pose a risk to a vulnerable population are placed on the Child Maltreatment Central Registry.”

SUBCHAPTER 9 — CHILD MALTREATMENT CENTRAL REGISTRY

SECTION.

- 12-18-903. Placement in the Child Maltreatment Central Registry.
- 12-18-908. Removal of name from the Child Maltreatment Central Registry.

SECTION.

- 12-18-909. Availability of true reports of child maltreatment from the central registry.
- 12-18-910. Availability of screened-out and unsubstantiated reports.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

Acts 2019, No. 945, § 11: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that some juve-

niles in Arkansas may be unaware of their rights under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that some individuals and entities that are responsible for the welfare of a juvenile may be unaware of the rights of the juvenile under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that the creation of the Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission will help increase awareness of a juvenile’s legal rights; that independent oversight of the child welfare system in Arkansas is more than likely to result in recommendations that will further improve the procedures and operations of the child welfare system; and that this act is necessary for the preservation of the public peace, health, and safety. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

RESEARCH REFERENCES

- ALR.** Challenges to Placement on State Child Abuse Registries on Other Than Constitutional Bases, 25 A.L.R.7th Art. 1 (2018).

12-18-903. Placement in the Child Maltreatment Central Registry.

(a) An offender’s name shall be placed in the Child Maltreatment Central Registry if:

(1) After notice, the offender eighteen (18) years of age or older at the time the act or omission occurred does not timely request an administrative hearing;

(2) The alleged offender was a child at the time of the act or omission and the child or his or her legal parent or legal guardian waived the administrative hearing;

(3) The administrative law judge upheld the investigative determination of true pursuant to a preliminary administrative hearing; or

(4) Upon completion of the administrative hearing process, the Department of Human Services' or Division of Arkansas State Police's investigative determination of true is upheld.

(b) In addition to the requirements of subsection (a) of this section, the name of an offender shall be placed on the Child Maltreatment Central Registry only if the Department of Human Services determines under § 12-18-702 that the offender may pose a risk of maltreatment to a vulnerable population that includes without limitation children, the elderly, persons with a disability, and persons with a mental health illness.

History. Acts 2009, No. 749, § 1; 2019, No. 802, § 8.

A.C.R.C. Notes. Acts 2019, No. 802, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) All members of society desire the safety of all children;

"(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

"(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary lifestyle and lack of physical activity for children today, which is often encouraged by parents and guardians, including without limitation by insisting on driving their children to school;

"(4) As measured by incidences of mental health difficulties, the over-supervised youth of today experience more difficulties when they reach adulthood than earlier generations;

"(5) Earlier generations learned resilience by walking, bicycling, playing, helping, and solving problems without constant adult intervention;

"(6) Parents and guardians are often in the best position to weigh the risk and make decisions concerning the safety of children under their care, including without limitation where their child may go, with whom, and when; and

"(7) Parents and guardians who have done nothing more than briefly and safely

permitted their children to remain unsupervised should not be subject to investigation and possible prosecution as it causes unnecessary governmental intrusion and diversion of valuable public resources.

"(b) It is the intent of the General Assembly that this act:

"(1) Protect and promote the inherent right of a parent or guardian to raise his or her children;

"(2) Protect the decision of a parent or a guardian to grant his or her children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home; and

"(3) Ensure that valuable public resources are used most effectively to protect children by providing a secondary review to ensure that:

"(A) Calls to the Child Abuse Hotline are properly accepted;

"(B) Child maltreatment investigations are closed when the results of the investigation indicate that the allegations lack merit; and

"(C) Only the names of offenders who pose a risk to a vulnerable population are placed on the Child Maltreatment Central Registry."

Amendments. The 2019 amendment added (b) and designated the former section as (a).

CASE NOTES**Placement in Registry Upheld.**

Substantial evidence supported the decision of the Department of Human Services that a teacher had committed sexual abuse of a minor student and ordering that the teacher's name be placed in the Child Maltreatment Central Registry, even though the criminal charges had been dropped; the ALJ had clearly consid-

ered the teacher's defenses and rejected them, the appellate court does not act as a super factfinder, and the teacher could not complain that he was denied an opportunity to cross-examine the student when he failed to subpoena her. *J.C. v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 131, 572 S.W.3d 878 (2019).

12-18-908. Removal of name from the Child Maltreatment Central Registry.

(a) If an adult offender is found guilty of, pleads guilty to, or pleads *nolo contendere* to an act that is the same act for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the offender's criminal record, the offender shall always remain in the registry unless the conviction is reversed or vacated.

(b)(1) The Department of Human Services shall identify in its policy and procedures manual the types of child maltreatment that shall automatically result in the removal of the name of an offender from the registry.

(2) If an offender has been entered into the registry as an offender for the named types of child maltreatment identified under subdivision (b)(1) of this section, the offender's name shall be removed from the registry on reports of this type of child maltreatment if the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the registry.

(c)(1) The department shall identify in its policy and procedures manual the types of child maltreatment for which an offender can request that the offender's name be removed from the registry.

(2)(A) If an offender has been entered into the registry as an offender for the named types of child maltreatment identified under subdivision (c)(1) of this section, the offender may petition the department, requesting that the offender's name be removed from the registry if the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the registry.

(B) If the department denies the request for removal of the name from the registry, the offender shall wait one (1) year from the date of the request for removal before filing a new petition with the department, requesting that the offender's name be removed from the registry.

(3) The department shall develop policy and procedures to assist it in determining whether to remove the offender's name from the registry.

(d) Notwithstanding the provisions of this subchapter, with regard to an offender who was a child at the time of the act or omission that resulted in a true finding of child maltreatment, the department shall:

(1) Not remove the offender's name from the registry if the offender was found guilty of, pleaded guilty to, or pleaded nolo contendere to a felony in circuit court as an adult for the act that is the same act for which the offender is named in the registry unless the conviction is reversed or vacated; or

(2) Remove the offender's name from the registry if:

(A) The juvenile has reached eighteen (18) years of age or more than one (1) year has passed from the date of the act or omission that caused the true finding of child maltreatment and there have been no subsequent acts or omissions resulting in a true finding of child maltreatment; and

(B) The offender can prove by a preponderance of the evidence that the juvenile offender has been rehabilitated.

(3) If the department denies the request for removal of the name from the registry, the offender shall wait one (1) year from the date of the request for removal before filing a new petition with the department, requesting that the offender's name be removed from the registry.

(e)(1)(A) If the department denies the request for removal of the name from the registry, the offender may request an administrative hearing within thirty (30) days from receipt of the department's decision.

(B) The standard on review for the administrative hearing shall be whether the department abused its discretion.

(2)(A) At least ten (10) days prior to the administrative hearing, the alleged offender and the department shall share any information with the other party that the party intends to introduce into evidence at the administrative hearing that is not contained in the record.

(B) If a party fails to timely share information, the administrative law judge shall:

(i) Grant a continuance;

(ii) Allow the record to remain open for submission of rebuttal evidence; or

(iii) Reject the information as not relevant to the rehabilitation or the incident of child maltreatment.

(f) The Secretary of the Department of Human Services shall adopt rules necessary to carry out this chapter pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except that the secretary shall not begin the process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., until the proposed rules have been reviewed by the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

History. Acts 2009, No. 749, § 1; 2019, No. 910, § 5158.

Amendments. The 2019 amendment substituted "Secretary of the Department

of Human Services" for "Director of the Department of Human Services" and "secretary" for "director" in (f).

12-18-909. Availability of true reports of child maltreatment from the central registry.

(a) True reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services and the Division of Arkansas State Police may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, or mailing records from a child maltreatment investigative file; and

(B) A reasonable fee for reproducing copies of electronic media, such as audio tables, video tapes, compact discs, DVDs, and photographs.

(2) A fee may not be charged to:

(A) A nonprofit or volunteer agency that requests searches of the investigative files; or

(B) A person who is indigent.

(c)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(d)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding information provided by the Department of Human Services and the Division of Arkansas State Police.

(3) However, a local educational agency or a school counselor shall forward all true reports of child maltreatment received from the Department of Human Services and the Division of Arkansas State Police when a child transfers from one (1) local educational agency to another and shall notify the Department of Human Services and the Division of Arkansas State Police of the child's new school and address, if known.

(4) Nothing in this chapter shall be construed to prevent subsequent disclosure by the subject of the report.

(5) Confidential data, records, reports, or documents created, collected, or compiled by or on behalf of the Department of Human Services, the Division of Arkansas State Police, or other entity authorized under this chapter to perform investigations or provide services to children, individuals, or families may be:

(A) Disclosed to and discussed with a member of the Child Maltreatment Investigations Oversight Committee; and

(B) Disclosed and discussed in closed meetings conducted by the Child Maltreatment Investigations Oversight Committee under § 10-3-3201 et seq.

(e)(1) The Department of Human Services and the Division of Arkansas State Police may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of child maltreatment, a juvenile offender, or an underaged juvenile offender.

(2) This information may include:

(A) The investigative determination or the investigation report; and

(B) The services offered and provided.

(f) If an alleged offender's name has been provisionally placed in the Child Maltreatment Central Registry, any disclosure by the registry shall include the notation that the name has only been provisionally placed in the registry.

(g) A report made under this chapter that is determined to be true, as well as any other information obtained, including protected health information and the administrative hearing decision, and a report written or photograph or radiological procedure taken concerning a true report in the possession of the Department of Human Services and the Division of Arkansas State Police shall be confidential and shall be made available only to:

(1) The administration of the adoption, foster care, children's and adult protective services programs, or child care licensing programs of any state;

(2) A federal, state, or local government entity, or any agent of the entity, having a need for the information in order to carry out its responsibilities under law to protect children from abuse or neglect;

(3) Any person who is the subject of a true report;

(4) A civil or administrative proceeding connected with the administration of the Arkansas child welfare state plan when the court or hearing officer determines that the information is necessary for the determination of an issue before the court or agency;

(5) An audit or similar activity conducted in connection with the administration of such a plan or program by any governmental agency that may by law conduct the audit or activity;

(6)(A) A person, agency, or organization engaged in a bona fide research or evaluation project having value as determined by the Department of Human Services and the Division of Arkansas State Police in future planning for programs for maltreated children or in developing policy directions.

(B) However, any confidential information provided for a research or evaluation project under this subdivision (g)(6) shall not be redisclosed.

(C) However, if a research or evaluation project results in the publication of related material, confidential information provided for

a research or evaluation project under this subdivision (g)(6) shall not be disclosed;

(7) A properly constituted authority, including multidisciplinary teams referenced in this chapter, investigating a report of known or suspected child abuse or neglect or providing services to a child or family that is the subject of a report;

(8)(A) The Division of Child Care and Early Childhood Education and the child care facility owner or operator who requested the registry information through a signed notarized release from an individual who is a volunteer, has applied for employment, is currently employed by a child care facility, or is the owner or operator of a child care facility.

(B) This disclosure shall be for the limited purpose of providing registry background information and shall indicate a true finding only;

(9) Child abuse citizen review panels described in the Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a;

(10) Child fatality review panels as authorized by the Department of Human Services;

(11) A grand jury upon a finding that information in the record is necessary for the determination of an issue before the grand jury;

(12)(A) A court in a criminal case upon finding that the information in the record is necessary for the determination of an issue before the court.

(B) The court may disclose the report to parties under the terms of a protective order issued by the court;

(13)(A) A court in a child custody or similar civil case upon finding that the information in the record is necessary for the determination of a health or safety issue concerning a child before the court.

(B) The court may disclose the report to the parties under the terms or a protective order issued by the court;

(14) The current foster parents of a child who is a subject of a report;

(15)(A) Federal, state, and local government entities, or any agent of such entities, that have a need for such information to carry out their responsibilities under law to protect children from child maltreatment.

(B) Acting in their official capacities under law to protect children, disclosure may be made to individual United States and Arkansas senators and representatives and their authorized staff members, but only if they agree not to permit any redisclosure of the information except for a legitimate state purpose to protect children from child maltreatment.

(C) However, disclosure shall not be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(16) A Court Appointed Special Advocates volunteer upon presentation of an order of appointment for a child who is a subject of a report;

(17) The attorney ad litem of a child who is the subject of a report;

(18)(A) An employer or volunteer agency for purposes of screening an employee, applicant, or volunteer who is or will be engaged in employment or activity with children, the elderly, individuals with disabilities, or individuals with mental illness upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The registry shall release only the following information on true reports to the employer or agency:

- (i) That the employee, applicant, or volunteer has a true report;
- (ii) The date the investigation was completed; and
- (iii) The type of true report;

(19) The Division of Developmental Disabilities Services and the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as to participants of the waiver program;

(20) The Division of Child Care and Early Childhood Education for purposes of enforcement of licensing laws and rules;

(21) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(22) Any person or entity to whom notification was provided under this chapter;

(23) The extent necessary to carry out a responsibility to ensure that children are protected while in the school environment or during off-campus school activities:

(A) A school district superintendent, a person in an equivalent position in a private school, or other district-level administrator;

(B) A public school principal, a person in an equivalent position in a private school, or other building-level administrator;

(C)(i) Another person or organization designated by a public school, private school, or school district to organize volunteers for the public school, private school, or school district upon the submission of a signed, notarized release from the volunteer.

(ii) The registry shall release only the following information on true reports to a person or an organization:

- (a) That the employee, applicant, or volunteer has a true report;
- (b) The date the investigation was completed; and
- (c) The type of true report; and

(D) Division of Elementary and Secondary Education;

(24) The custodial and noncustodial parents, guardians, and legal custodians of the child who is identified as the offender;

(25) Any family advocacy program or other person designated by the military authority for the military installation receiving notice of a Child Abuse Hotline report under § 12-18-508;

(26) The custodial parent, custodian, or guardian of a child who is or may be currently cared for or supervised by the offender; and

(27) A Child Welfare Ombudsman.

History. Acts 2009, No. 749, § 1; 2011, No. 250, § 16; 2017, No. 528, § 6; 2017, No. 1143, § 23; 2013, No. 575, § 2; 2013, No. 713, §§ 7, 8; 2017, No. 913, § 37; No. 1006, §§ 29-31; 2015, No. 1004, 2019, No. 315, § 877; 2019, No. 531, § 5; §§ 31-35; 2015, No. 1097, §§ 2, 3; 2017, 2019, No. 590, § 3; 2019, No. 910,

§§ 2223-2227; 2019, No. 945, § 8; 2019, No. 1081, § 8.

A.C.R.C. Notes. Acts 2019, No. 945, § 1, provided: "Legislative intent. It is the intent of the General Assembly to create a Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child welfare system in Arkansas".

Amendments. The 2017 amendment by No. 250, in (e)(1), inserted "child" preceding maltreatment" and substituted "offender" for "aggressor" at the end.

The 2017 amendment by No. 528 added (g)(25).

The 2017 amendment by No. 713 added (d)(5); redesignated former (g)(15)(A) as (g)(15)(A)(i); added (g)(15)(A)(ii); and made a stylistic change.

The 2017 amendment by No. 913 substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Aging and Adult Services" in (g)(19).

The 2019 amendment by No. 315 substituted "rules" for "regulations" in (g)(20).

The 2019 amendment by No. 531 added (g)(26).

The 2019 amendment by No. 590 redesignated (g)(15)(A)(i) and (g)(15)(B) as (g)(15)(B) and (g)(15)(C); added (g)(15)(A); deleted (g)(15)(A)(ii); and, in (g)(15)(B), inserted "under law to protect children, disclosure may be made to" and added "except for a legitimate state purpose to protect children from child maltreatment".

The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (d)(2), twice in (d)(3), in (d)(5), in (e)(1), and in (g)(6)(A); and substituted "Division of Elementary and Secondary Education" for "Department of Education" in (g)(23)(D).

The 2019 amendment by No. 945 added (g)(26) [now (g)(27)].

The 2019 amendment by No. 1081 inserted (d)(5)(A) and redesignated former (d)(5) as the introductory language of (d)(5) and (d)(5)(B); in the introductory language of (d)(5), deleted "This section does not prohibit the disclosure and discussion of" from the beginning, and added "may be" at the end; and added "Disclosed and discussed" in (d)(5)(B).

12-18-910. Availability of screened-out and unsubstantiated reports.

(a) Screened-out, administratively closed, and unsubstantiated reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services and the Division of Arkansas State Police may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, or mailing records from a child maltreatment investigative file; and

(B) A reasonable fee for reproducing copies of electronic media, such as audio tapes, video tapes, compact discs, DVDs, and photographs.

(2) A fee shall not be charged to:

(A) A nonprofit or volunteer agency that requests searches of the investigative files; or

(B) A person who is indigent.

(c)(1) The Department of Human Services and the Division of Arkansas State Police shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(d)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding information provided by the Department of Human Services and the Division of Arkansas State Police.

(3) Nothing in this chapter shall be construed to prevent subsequent disclosure by the subject of the report.

(4) Confidential data, records, reports, or documents created, collected, or compiled by or on behalf of the Department of Human Services, the Division of Arkansas State Police, or other entity authorized under this chapter to perform investigations or provide services to children, individuals, or families may be:

(A) Disclosed to and discussed with a member of the Child Maltreatment Investigations Oversight Committee; and

(B) Disclosed and discussed in closed meetings conducted by the Child Maltreatment Investigations Oversight Committee under § 10-3-3201 et seq.

(e) Any record of a screened-out or administratively closed report of child maltreatment shall not be disclosed except to the prosecuting attorney and law enforcement and may be used only within the Department of Human Services and the Division of Arkansas State Police for purposes of administration of the program.

(f) An unsubstantiated report, including protected health information and the administrative hearing decision, shall be confidential and shall be disclosed only to:

(1) The prosecuting attorney;

(2) A subject of the report;

(3) A grand jury upon a finding that information in the record is necessary for the determination of an issue before a grand jury;

(4)(A) A court in a criminal case upon finding that the information in the record is necessary for the determination of an issue before the court.

(B) The court may disclose the report to parties under the terms of a protective order issued by the court;

(5)(A) A court in a child custody or similar civil case upon finding that the information in the record is necessary for the determination of a health or safety issue concerning a child before the court.

(B) The court may disclose the report to the parties under the terms or a protective order issued by the court;

(6)(A) Federal, state, and local government entities, or any agent of such entities, that have a need for such information to carry out their responsibilities under law to protect children from child maltreatment.

(B) Acting in their official capacities under law to protect children, disclosure may be made to individual United States and Arkansas

senators and representatives and their authorized staff members, but only if they agree not to permit any redisclosure of the information except for a legitimate state purpose to protect children from child maltreatment.

(C) However, disclosure shall not be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(7) Law enforcement;

(8) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(9) Adult protective services;

(10) The Division of Developmental Disabilities Services and the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as to participants of the waiver program;

(11) A Court Appointed Special Advocates volunteer upon presentation of an order of appointment for a child who is a subject of a report;

(12) The attorney ad litem of a child who is the subject of a report;

(13) Any person or entity to whom notification was provided under this chapter;

(14) The custodial and noncustodial parents, guardians, and legal custodians of the child who is identified as the offender;

(15) Any family advocacy program or other person designated by the military authority for the military installation receiving notice of a Child Abuse Hotline report under § 12-18-508; and

(16) A Child Welfare Ombudsman.

(g) Hard copy records of unsubstantiated reports shall be retained no longer than eighteen (18) months for purposes of audit.

(h) Information on unsubstantiated reports included in the automated data system shall be retained indefinitely to assist the Department of Human Services and the Division of Arkansas State Police in assessing future risk and safety.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 24; 2013, No. 1006, §§ 32-34; 2015, No. 1004, § 36; 2015, No. 1097, § 4; 2017, No. 528, § 7; 2017, No. 713, §§ 9, 10; 2017, No. 913, § 38; 2019, No. 590, § 4; 2019, No. 802, §§ 9, 10; 2019, No. 945, § 9; 2019, No. 1081, § 9.

A.C.R.C. Notes. Acts 2019, No. 802, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) All members of society desire the safety of all children;

"(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

"(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary

lifestyle and lack of physical activity for children today, which is often encouraged by parents and guardians, including without limitation by insisting on driving their children to school;

"(4) As measured by incidences of mental health difficulties, the over-supervised youth of today experience more difficulties when they reach adulthood than earlier generations;

"(5) Earlier generations learned resilience by walking, bicycling, playing, helping, and solving problems without constant adult intervention;

"(6) Parents and guardians are often in the best position to weigh the risk and make decisions concerning the safety of children under their care, including without limitation where their child may go, with whom, and when; and

“(7) Parents and guardians who have done nothing more than briefly and safely permitted their children to remain unsupervised should not be subject to investigation and possible prosecution as it causes unnecessary governmental intrusion and diversion of valuable public resources.

“(b) It is the intent of the General Assembly that this act:

“(1) Protect and promote the inherent right of a parent or guardian to raise his or her children;

“(2) Protect the decision of a parent or a guardian to grant his or her children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home; and

“(3) Ensure that valuable public resources are used most effectively to protect children by providing a secondary review to ensure that:

“(A) Calls to the Child Abuse Hotline are properly accepted;

“(B) Child maltreatment investigations are closed when the results of the investigation indicate that the allegations lack merit; and

“(C) Only the names of offenders who pose a risk to a vulnerable population are placed on the Child Maltreatment Central Registry.”

Acts 2019, No. 945, § 1, provided: “Legislative intent. It is the intent of the General Assembly to create a Child Wel-

fare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child welfare system in Arkansas”.

Amendments. The 2017 amendment by No. 528 added (f)(15).

The 2017 amendment by No. 713 added (d)(4); redesignated former (f)(6)(A) as (f)(6)(A)(i); added (f)(6)(A)(ii); and made a stylistic change.

The 2017 amendment by No. 913 substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Aging and Adult Services” in (f)(10).

The 2019 amendment by No. 590 redesignated (f)(6)(A)(i) and (f)(6)(B) as (f)(6)(B) and (f)(6)(C); added (f)(6)(A); deleted (f)(6)(A)(ii); and, in (f)(6)(B), inserted “under law to protect children, disclosure may be made to” and added “except for a legitimate state purpose to protect children from child maltreatment”.

The 2019 amendment by No. 802 inserted “administratively closed” in (a); and inserted “or administratively closed” in (e).

The 2019 amendment by No. 945 added (f)(16).

The 2019 amendment by No. 1081 inserted (d)(4)(A) and redesignated former (d)(4) as the introductory language of (d)(4) and (d)(4)(B); in the introductory language of (d)(4), deleted “This section does not prohibit the disclosure and discussion of” from the beginning, and added “may be” at the end; and added “Disclosed and discussed” in (d)(4)(B).

CASE NOTES

In Camera Review.

Because the circuit court erred by not conducting an in camera review of the alleged sexual assault victim’s Department of Human Services file to determine if it contained information material to the defense concerning the victim’s accusations against her biological father, which were later recanted, remand for further

proceedings was necessary for the court to conduct an in camera review of the file. If the file contained information that probably would have changed the outcome of the trial, defendant was to receive a new trial unless the nondisclosure was harmless beyond a reasonable doubt. *Taffner v. State*, 2018 Ark. 99, 541 S.W.3d 430 (2018).

SUBCHAPTER 10 — PROTECTIVE CUSTODY

SECTION.

12-18-1001. Protective custody generally.
12-18-1004. Notice when custody is invoked.

SECTION.

12-18-1006. Custody of children generally — Health and safety of the child.

SECTION.

12-18-1008. Removal from home — Procedure.

12-18-1001. Protective custody generally.

(a) A police officer, law enforcement, a juvenile division of circuit court judge during juvenile proceedings concerning the child or a sibling of the child, or a designated employee of the Department of Human Services may take a child into custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his or her custody without the consent of the parent or the guardian, whether or not additional medical treatment is required, if:

(1) The child is subjected to neglect as defined under § 12-18-103(14)(B) and the department assesses the family and determines that the newborn and any other children, including siblings, under the custody or care of the mother are at substantial risk of serious harm such that the children need to be removed from the custody or care of the mother;

(2) The child is dependent as defined in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.; or

(3) Circumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian, or caretaker presents an immediate danger to the health or physical well-being of the child.

(b) However, custody shall not exceed seventy-two (72) hours except in the event that the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case custody may be extended to the end of the next business day following the weekend or holiday.

(c) If the department assesses the health and safety of a child and determines that there is an immediate danger to the health or physical well-being of the child in the care, custody, or control of the legal parent, guardian, or custodian, the department shall place the child into protective custody and shall not direct or allow the legal parent, guardian, or custodian to place the child in the care, custody, or control of another person.

(d)(1) If the department assesses the health and safety of a child and determines that the child cannot safely remain in the care, custody, or control of the legal parent, guardian, or custodian without the implementation of a protection plan, the department may implement a protection plan that allows the child to remain in his or her place of residence and includes services to address the safety of the child.

(2)(A) If a protection plan is implemented under subdivision (d)(1) of this section, then the department shall reassess the health and safety of the child within thirty (30) days of the date on which the protection plan was implemented.

(B) If the department determines that a substantial risk of harm to the health and safety of the child remains after a reassessment

under subdivision (d)(2)(A) of this section is performed, then the department shall file a petition for dependency-neglect.

(3) This subsection does not apply if the parent, guardian, or custodian is not the alleged offender and the parent, guardian, or custodian is not alleged to have failed to protect the child.

(e) If protective custody is taken by a juvenile division circuit court judge during juvenile proceedings concerning the child or a sibling of the child, the court shall:

(1) Appoint a dependency-neglect attorney ad litem for the child or children for whom protective custody was taken; and

(2) Designate a member of the court's staff, a party to the juvenile case, or a juvenile officer to immediately provide a copy of the order of appointment and all relevant information from the juvenile case to the attorney ad litem appointed by the court.

(f) The department shall:

(1) Assume custody of every child who is taken into custody under this subchapter;

(2) Assess the health and safety of each child who is taken into custody under this subchapter to determine whether to continue or release custody of the child;

(3) Release custody of a child who is taken into custody under this subchapter if the department determines that custody is no longer required under this section; and

(4) Notify the circuit court if the department releases custody of a child whom the circuit court has taken into custody under this subchapter.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 25; 2015, No. 1017, §§ 15, 16; 2017, No. 963, § 1; 2019, No. 531, § 6.

Amendments. The 2017 amendment redesignated former (d) as (d)(1); added (d)(2) and (d)(3); and substituted “may

implement a protection plan that allows the child to remain in his or her place of residence and includes services to address the safety of the child” for “shall file a petition for dependency-neglect” in (d)(1).

The 2019 amendment added (f).

CASE NOTES

State Actor Taking Children Into Custody.

District court did not err in denying the child abuse investigator's motion to dismiss the parents' civil rights claim that she had removed their minor children from their home without an adequate basis because pleaded facts plausibly

showed that she had acted under color of state law to separate the children from the parents, have them questioned and examined, and removed by police at her insistence. *Stanley v. Finnegan*, 899 F.3d 623 (8th Cir. 2018).

Cited: Ark. Dep't of Human Servs. v. Veasley, 2016 Ark. App. 175 (2016).

12-18-1004. Notice when custody is invoked.

In any case in which custody is invoked under this subchapter, the individual taking the child into custody shall immediately notify the Department of Human Services.

History. Acts 2009, No. 749, § 1; 2019, No. 531, § 7.

Amendments. The 2019 amendment inserted “under this subchapter”, inserted

“immediately”, and deleted “in order that a child protective proceeding may be initiated within the time specified in this subchapter” following “Services”.

12-18-1006. Custody of children generally — Health and safety of the child.

(a)(1) During the course of any child maltreatment investigation, whether conducted by the Department of Human Services or the Division of Arkansas State Police, the Department of Human Services shall assess the health and safety of a child who is subject to the child maltreatment investigation and determine whether or not custody under this subchapter is required.

(2) If the Division of Arkansas State Police is the investigative agency, it shall disclose information as needed for the Department of Human Services to assess the health and safety of a child subject to the child maltreatment investigation and determine whether or not custody under this subchapter is required.

(b) The child’s health and safety shall be the paramount concern in determining whether or not to exercise custody under this subchapter.

History. Acts 2009, No. 749, § 1; 2015, No. 1026, § 15; 2019, No. 531, § 8.

Amendments. The 2019 amendment rewrote (a)(1) and (a)(2); and substituted

“whether or not to exercise custody under this subchapter” for “whether or note to remove a child from the custody of his or her parents” in (b).

12-18-1008. Removal from home — Procedure.

(a) If the Department of Human Services determines that custody under this subchapter is required, the Department of Human Services shall take steps to remove the child under custody as outlined in this chapter or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(b) After the Department of Human Services has removed the child, the child shall be placed in a licensed or approved foster home, shelter, facility, or an exempt child welfare agency as defined at § 9-28-402(12).

(c) No one, including the family, the Department of Human Services, the Division of Arkansas State Police, or local law enforcement shall allow a child to be placed in a nonapproved or nonlicensed foster home, shelter, or facility.

History. Acts 2009, No. 749, § 1; 2019, No. 531, § 9.

Amendments. The 2019 amendment substituted “If the Department of Human Services determines that custody under this subchapter is required, the depart-

ment shall take steps” for “If an investigation under this chapter determines that the child cannot safely remain at home, the Department of Human Services shall take steps” in (a).

SUBCHAPTER 12 — TRAINING REGARDING SEXUALLY EXPLOITED CHILDREN

SECTION.
12-18-1202. Training regarding sexually exploited children.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-18-1202. Training regarding sexually exploited children.

The Arkansas Juvenile Officers Association, the Division of Law Enforcement Standards and Training, or the Prosecutor Coordinator may provide training to intake officers, law enforcement, prosecutors, and any other appropriate staff concerning how to identify a sexually exploited child and how to obtain appropriate services for a sexually exploited child.

History. Acts 2013, No. 1257, § 8; substituted “the Division of Law Enforcement Standards and Training” for “Arkansas Law Enforcement Training Academy”.
Amendments. The 2019 amendment

CHAPTER 19

HUMAN TRAFFICKING — PREVENTION AND LAW ENFORCEMENT

SECTION.
12-19-101. State Task Force for the Prevention of Human Trafficking.
12-19-102. Posting information about the National Human Traffick-

SECTION.
ing Resource Center Hotline.
12-19-105. Training and educational materials on human trafficking.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of

certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two

uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of

the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-19-101. State Task Force for the Prevention of Human Trafficking.

(a)(1) The Attorney General may establish a State Task Force for the Prevention of Human Trafficking.

(2) The task force shall address all aspects of human trafficking, including sex trafficking and labor trafficking of both United States citizens and foreign nationals.

(b) If established, representatives on the task force shall be appointed by the Attorney General and may include representatives from:

- (1) The office of the Attorney General;
- (2) The office of the Governor;
- (3) The Department of Labor and Licensing;
- (4) The Department of Health;
- (5) The Department of Human Services;
- (6) The Arkansas Association of Chiefs of Police;
- (7) The Arkansas Sheriffs' Association;
- (8) The Division of Arkansas State Police;
- (9) The Arkansas Prosecuting Attorneys Association;
- (10) Local law enforcement; and
- (11) Nongovernmental organizations such as:

(A) Those specializing in the problems of human trafficking;

(B) Those representing diverse communities disproportionately affected by human trafficking;

(C) Agencies devoted to child services and runaway services; and

(D) Academic researchers dedicated to the subject of human trafficking.

(c) If the task force is created by the Attorney General, he or she may invite federal agencies that operate in the state to be members of the task force, including without limitation:

- (1) The Federal Bureau of Investigation;
- (2) United States Immigration and Customs Enforcement; and
- (3) The United States Department of Labor.

(d) If the task force is created by the Attorney General, the task force shall:

(1) Develop a state plan;

(2) Coordinate the implementation of the state plan;

(3) Coordinate the collection and sharing of human trafficking data among government agencies in a manner that ensures that the privacy of victims of human trafficking is protected and that the data collection shall respect the privacy of victims of human trafficking;

(4) Coordinate the sharing of information between agencies to detect individuals and groups engaged in human trafficking;

(5) Explore the establishment of state policies for time limits for the issuance of law enforcement agency endorsements as described in 8 C.F.R. § 214.11(f)(1), as it existed on January 1, 2013;

(6) Establish policies to enable state government to work with nongovernmental organizations and other elements of the private sector to prevent human trafficking and provide assistance to victims of human trafficking who are United States citizens or foreign nationals;

(7) Evaluate various approaches used by state and local governments to increase public awareness of human trafficking, including trafficking of United States citizens and foreign national victims;

(8) Develop curriculum and train law enforcement agencies, prosecutors, public defenders, judges, and others involved in the criminal and juvenile justice systems on:

(A) Offenses under the Arkansas Human Trafficking Act of 2013, § 5-18-101 et seq.;

(B) Methods used in identifying victims of human trafficking who are United States citizens or foreign nationals, including preliminary interview techniques and appropriate questioning methods;

(C) Methods for prosecuting human traffickers;

(D) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;

(E) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors;

(F) The necessity of treating victims of human trafficking as crime victims rather than criminals; and

(G) Methods for promoting the safety of victims of human trafficking; and

(9) Submit a report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

History. Acts 2013, No. 132, § 6; 2013, No. 133, § 6; 2019, No. 910 § 5403.

Amendments. The 2019 amendment substituted “Department of Labor and Li-

censing” for “Department of Labor” in (b)(3); and substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” in (b)(8).

12-19-102. Posting information about the National Human Trafficking Resource Center Hotline.

(a) The following establishments shall post in a conspicuous place near the entrance of the establishment, or where posters and notices of this type customarily are posted, a poster described in subsection (b) of this section measuring at least eight and one-half inches by eleven inches (8½" x 11") in size:

(1) A hotel, motel, or other establishment that has been cited as a public nuisance for prostitution under § 20-27-401;

(2) A strip club or other sexually oriented business;

(3) A private club that has a liquor permit for on-premises consumption and does not hold itself out to be a food service establishment;

(4) An airport;

(5) A train station that serves passengers;

(6) A bus station; and

(7) A privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and overnight parking.

(b)(1) The poster shall read:

“If you or someone you know is being forced to engage in any activity and cannot leave — whether it is commercial sex, housework, farm work, or any other activity — call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services. Victims of human trafficking are protected under United States and Arkansas state law.

The Hotline is:

- Available 24 hours a day, 7 days a week
- Toll-free
- Operated by a non-profit, non-governmental organization
- Anonymous and confidential
- Accessible in 170 languages
- Able to provide help, referral to services, training, and general information”.

(2) The poster shall be printed in English, Spanish, and any other language mandated by the Voting Rights Act of 1965, 42 U.S.C. § 1973, as it existed on January 1, 2013, in the county where the poster will be posted.

(c) The poster shall be available on the websites of all of the following:

(1) The Alcoholic Beverage Control Board where documents associated with obtaining a liquor license or alcoholic beverage license are customarily located;

(2) The Department of Labor and Licensing; and

(3) The Arkansas Department of Transportation.

(d)(1) To obtain a copy of the poster required to be posted under this section, the owners or operators of an establishment required to post the notice under this section shall:

(A) Print the poster from any of the internet websites in subsection (c) of this section; or

(B) Request that the poster be mailed for the cost of printing and first-class postage.

(2) The owner or operator shall post the sign in compliance with subsection (a) of this section.

(e)(1) If the regulatory agency that licenses or permits an establishment under this section finds that the establishment has failed to post the information required under this section, the owner or operator shall receive:

- (A) For a first violation, a warning; and
- (B) For a second or subsequent violation, a fine not to exceed five hundred dollars (\$500).
- (2) The violation of or noncompliance with this section, and each day’s continuance thereof, shall constitute a separate and distinct violation.
- (f) The civil fines in subsection (e) of this section do not apply to establishments that are owned or operated by the State of Arkansas.

History. Acts 2013, No. 1157, § 5; 2017, No. 707, § 20; 2019, No. 910, § 5404.

Amendments. The 2017 amendment substituted “Department of Transportation” for “State Highway and Transportation Department” in (c)(3). The 2019 amendment substituted “Department of Labor and Licensing” for “Department of Labor” in (c)(2).

12-19-105. Training and educational materials on human trafficking.

- (a) The Department of Education and the Department of Human Services shall collaborate on providing awareness and training materials to local school districts on human trafficking that include without limitation strategies for the prevention of the trafficking of children.
- (b) The training materials required under subsection (a) of this section shall describe local, state, and national resources to which a student, a parent, a counselor, or school personnel may consult for information on human trafficking that includes without limitation strategies for the prevention of the trafficking of children.

History. Acts 2019, No. 937, § 1.

SUBTITLE 3. CORRECTIONAL FACILITIES AND PROGRAMS

CHAPTER 26

CRIMINAL DETENTION FACILITIES STANDARDS

| SECTION. | SECTION. |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 12-26-101. Policy — Purpose of chapter. | 12-26-106. Powers and duties of a criminal detention facility review committee. |
| 12-26-102. Definition. | 12-26-107. Inspection of facility — Report. |
| 12-26-103. Office of Criminal Detention Facilities Review Coordinator — Creation — Duties. | 12-26-108. Failure to meet minimum standards — Procedure. |
| 12-26-105. Criminal detention facility review committee districts and committees created — Members. | 12-26-109. [Repealed.] |

A.C.R.C. Notes. Acts 2017, No. 153, § 9, provided: "Temporary legislation.

"(a)(1) The criminal detention facility review committees established under § 12-26-101 et seq. before the effective date of this act are abolished on January 1, 2019.

"(2) A vacancy on a committee abolished by this act shall not be filled before January 1, 2019, absent an appointment by the Governor in the event of an emergency.

"(b) At the initial meeting of a criminal detention facility review committee created under this act, the members of the committee shall draw lots for staggered initial terms as follows:

"(1) One (1) member to serve an initial one-year term;

"(2) One (1) member to serve an initial two-year term;

"(3) One (1) member to serve an initial three-year term; and

"(4) Two (2) members to serve initial four-year terms."

Effective Dates. Acts 2017, No. 153, § 10: Jan. 1, 2019, except §§ 7-9, effective

Aug. 1, 2017. Effective date clause provided: "Sections 1 through 6 of this act are effective on and after January 1, 2019."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-26-101. Policy — Purpose of chapter.

(a) It is declared to be the policy of the State of Arkansas that all criminal detention facilities and juvenile detention facilities within the counties of the state shall conform to certain minimum standards of construction, maintenance, and operation.

(b) It is the purpose of this chapter to implement this policy by establishing a criminal detention facility review committee within each of the criminal detention facility review committee districts of the state with the authority and responsibility to administer the provisions of this chapter and other laws enacted relating to standards for criminal detention facilities and juvenile detention facilities.

History. Acts 1983, No. 741, § 1; A.S.A. 1947, § 46-1210; Acts 2017, No. 153, § 1.

Amendments. The 2017 amendment inserted "and juvenile detention facilities" in (a) and (b); and, in (b), substituted "facility" for "facilities" preceding "review committee within" and substituted "criminal

detention facility review committee districts" for "judicial districts".

Effective Dates. Acts 2017, No. 153, § 10: Jan. 1, 2019, except §§ 7-9, effective Aug. 1, 2017. Effective date clause provided: "Sections 1 through 6 of this act are effective on and after January 1, 2019."

12-26-102. Definition.

As used in this chapter, "criminal detention facility" means any institution operated by a political subdivision or a combination of

political subdivisions for the care, keeping, or rehabilitative needs of adult criminal offenders, including regional jails, county jails, municipal jails, and temporary holding units.

History. Acts 1983, No. 741, § 2; 1985, No. 539, § 1; A.S.A. 1947, § 46-1211; Acts 2001, No. 1185, § 2; 2003, No. 1473, § 26; 2017, No. 153, § 2.

Amendments. The 2017 amendment deleted (1) and (3) through (5); deleted the (2) designation; and substituted “political subdivision or a combination of political

subdivisions” for “political jurisdiction or a combination of jurisdictions”.

Effective Dates. Acts 2017, No. 153, § 10: Jan. 1, 2019, except §§ 7-9, effective Aug. 1, 2017. Effective date clause provided: “Sections 1 through 6 of this act are effective on and after January 1, 2019.”

12-26-103. Office of Criminal Detention Facilities Review Coordinator — Creation — Duties.

(a) There is established the Office of Criminal Detention Facilities Review Coordinator within the Department of Corrections which shall consist of:

(1) A criminal detention facilities review coordinator, who shall be appointed by and serve at the pleasure of the Governor; and

(2) An administrative assistant.

(b) The office shall be responsible for promulgating minimum standards for the construction, maintenance, and operation of local, county, regional, or state criminal detention facilities and juvenile detention facilities in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) The coordinator shall perform all duties necessary to assure uniformity in the interpretation and administration of the minimum standards by the several criminal facility detention review committees.

History. Acts 1983, No. 741, § 7; A.S.A. 1947, § 46-1216; Acts 1989, No. 515, § 3; 2003, No. 1473, § 27; 2017, No. 153, § 3; 2019, No. 910, § 693.

Amendments. The 2017 amendment deleted former (a)(2) and redesignated former (a)(3) as present (a)(2); deleted “coordinator’s” preceding “office” in (b); inserted “criminal facility detention review” in (c); and made a stylistic change.

The 2019 amendment inserted “within the Department of Corrections” in the introductory language of (a).

Effective Dates. Acts 2017, No. 153, § 10: Jan. 1, 2019, except §§ 7-9, effective Aug. 1, 2017. Effective date clause provided: “Sections 1 through 6 of this act are effective on and after January 1, 2019.”

12-26-105. Criminal detention facility review committee districts and committees created — Members.

(a) There are created eight (8) criminal detention facility review committee districts as follows:

(1) Criminal Detention Facility Review Committee District One is composed of the following counties: Baxter, Benton, Boone, Carroll, Madison, Marion, Newton, Searcy, and Washington;

(2) Criminal Detention Facility Review Committee District Two is composed of the following counties: Cleburne, Conway, Faulkner, Fulton, Independence, Izard, Sharp, Stone, Van Buren, and White;

(3) Criminal Detention Facility Review Committee District Three is composed of the following counties: Clay, Craighead, Greene, Jackson, Lawrence, Mississippi, Poinsett, and Randolph;

(4) Criminal Detention Facility Review Committee District Four is composed of the following counties: Crawford, Franklin, Johnson, Logan, Montgomery, Polk, Pope, Scott, Sebastian, and Yell;

(5) Criminal Detention Facility Review Committee District Five is composed of the following counties: Crittenden, Cross, Lee, Lonoke, Monroe, Phillips, Prairie, St. Francis, and Woodruff;

(6) Criminal Detention Facility Review Committee District Six is composed of the following counties: Arkansas, Garland, Grant, Hot Spring, Jefferson, Perry, Pulaski, and Saline;

(7) Criminal Detention Facility Review Committee District Seven is composed of the following counties: Clark, Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, Ouachita, Pike, and Sevier; and

(8) Criminal Detention Facility Review Committee District Eight is composed of the following counties: Ashley, Bradley, Calhoun, Chicot, Cleveland, Dallas, Desha, Drew, Lincoln, and Union.

(b)(1) There is created within each district a criminal detention facility review committee to be composed of five (5) members who are residents within the district and who do not hold public office.

(2) The Governor shall appoint the members of a committee for a term of four (4) years as follows:

(A) A county in the district shall be represented on the committee by no more than one (1) member;

(B) At least one (1) member on the committee shall be a youth services worker or juvenile advocate;

(C) The Governor may reappoint a member of the committee to the committee at the end of the member's term; and

(D) If a vacancy occurs on the committee, the remaining members of the committee shall notify in writing the Governor of the vacancy, and the Governor shall appoint another member to serve the remainder of the vacated term.

(c) Each year the members of a committee shall elect one (1) member to serve as chair.

(d)(1) A committee shall function as a state agency.

(2)(A) A member of a committee has all of the rights and privileges of a state officer while performing his or her duties as assigned by this chapter.

(B) Subdivision (d)(2)(A) of this section extends to any case that may arise as a result of the duties assigned by this chapter without a time limitation except as may already exist by other statutes.

(e)(1) A member of a committee shall receive no compensation or remuneration, however the state shall reimburse a member for clerical

and typing expenses approved by the Criminal Detention Facilities Review Coordinator.

(2) A member of a committee may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1983, No. 741, § 4; 1985, No. 539, §§ 2, 3; A.S.A. 1947, § 46-1213; Acts 1989, No. 515, § 1; 1997, No. 250, § 70; 2017, No. 153, § 4.

Amendments. The 2017 amendment rewrote the section.

Effective Dates. Acts 2017, No. 153, § 10: Jan. 1, 2019, except §§ 7-9, effective Aug. 1, 2017. Effective date clause provided: "Sections 1 through 6 of this act are effective on and after January 1, 2019."

12-26-106. Powers and duties of a criminal detention facility review committee.

A criminal detention facility review committee shall:

(1) Provide consultation and technical assistance to county and local government officials with respect to criminal detention facilities and juvenile detention facilities;

(2) Visit and inspect the criminal detention facilities and juvenile detention facilities for compliance with the standards as established under § 12-26-103;

(3) Advise government officials and other appropriate persons of deficiencies in the criminal detention facilities and juvenile detention facilities and make recommendations for improvements;

(4) Submit written reports of the inspections to appropriate agencies and persons as provided in § 12-26-107;

(5) Review and comment on plans for the construction and major modification or renovation of the criminal detention facilities and juvenile detention facilities; and

(6) Perform such other duties as may be necessary to carry out the policy of the state regarding criminal detention facilities and juvenile detention facilities.

History. Acts 1983, No. 741, § 6; A.S.A. 1947, § 46-1215; Acts 1989, No. 515, § 2; 2017, No. 153, § 5; 2017, No. 250, § 17.

Amendments. The 2017 amendment by No. 153 substituted "a criminal detention facility review committee" for "committees" in the section heading; in the introductory language, substituted "A criminal detention facility review committee" for "The criminal detention facility review committees" and deleted "have the authority and responsibility to" from the end; and substituted "criminal detention

facilities and juvenile detention facilities" for "facilities" in (3).

The 2017 amendment by No. 250 deleted "have the authority and responsibility to" at the end of the introductory language; and substituted "criminal detention facilities and juvenile detention facilities" for "facilities" in (3).

Effective Dates. Acts 2017, No. 153, § 10: Jan. 1, 2019, except §§ 7-9, effective Aug. 1, 2017. Effective date clause provided: "Sections 1 through 6 of this act are effective on and after January 1, 2019."

12-26-107. Inspection of facility — Report.

(a) Except as otherwise provided in this chapter, each criminal detention facility review committee shall visit and inspect each crimi-

nal detention facility and each juvenile detention facility, if any, in the committee's criminal detention facility review committee district at least annually for the purpose of determining the conditions of confinement, the treatment of prisoners, and whether the criminal detention facilities and juvenile detention facilities comply with the minimum standards established pursuant to this chapter.

(b)(1) A written report of each inspection shall be made within thirty (30) days following such inspection to the administrative judge for a judicial district within the geographic area of the criminal detention facility review committee district in which the criminal detention facility or juvenile detention facility is located and to the county judge or the governing body of the political subdivision whose criminal detention facility or juvenile detention facility is the subject of the written report.

(2) The written report shall specify those respects in which the criminal detention facility or juvenile detention facility does not comply with the required minimum standards.

History. Acts 1983, No. 741, § 8; A.S.A. 1947, § 46-1217; Acts 1989, No. 515, § 4; 2017, No. 153, § 6; 2017, No. 250, § 18.

Amendments. The 2017 amendment by No. 153, in (a), substituted "the committee's criminal detention facility review committee district" for "its judicial district" and substituted "criminal detention facilities and juvenile detention facilities" for "facilities"; rewrote (b)(1); and, in (b)(2), inserted "written" and substituted "criminal detention facility or juvenile detention facility" for "facility".

The 2017 amendment by No. 250 substituted "criminal detention facilities and

juvenile detention facilities" for "facilities" in (a); in (b)(1), substituted "criminal detention facility or juvenile detention facility" for "facility" throughout and inserted "written" preceding "report" at the end; and, in (b)(2), inserted "written" and substituted "criminal detention facility or juvenile detention facility" for "facility".

Effective Dates. Acts 2017, No. 153, § 10: Jan. 1, 2019, except §§ 7-9, effective Aug. 1, 2017. Effective date clause provided: "Sections 1 through 6 of this act are effective on and after January 1, 2019."

12-26-108. Failure to meet minimum standards — Procedure.

(a)(1) If an inspection under this chapter discloses that the criminal detention facility or juvenile detention facility does not meet the minimum standards established by the Criminal Detention Facilities Review Coordinator, the criminal detention facility review committee shall send notice, together with the inspection report, to the governing body responsible for the criminal detention facility or juvenile detention facility.

(2) A copy of the notice required by this chapter shall also be sent to the administrative judge of a judicial district within the geographic area of the criminal detention facility review committee district in which the criminal detention facility or juvenile detention facility is located.

(b) The appropriate governing body shall promptly meet to consider the inspection report, and the chair of the criminal detention facility

review committee, or the chair's designee, shall appear to advise and consult concerning appropriate corrective action.

(c) The governing body shall then initiate appropriate corrective action within six (6) months of the receipt of the inspection report or may voluntarily close the criminal detention facility or juvenile detention facility or the objectionable portion of the criminal detention facility or juvenile detention facility.

(d)(1) If the governing body fails to initiate corrective action within six (6) months after receipt of the inspection report, or fails to correct the disclosed conditions, or fails to close the criminal detention facility or juvenile detention facility or the objectionable portion of the criminal detention facility or juvenile detention facility, the committee may petition a circuit court within the judicial district in which the criminal detention facility or juvenile detention facility is located to close the criminal detention facility or juvenile detention facility.

(2) The petition shall include the inspection report regarding the criminal detention facility or juvenile detention facility.

(3) The local governing body shall then have thirty (30) days to respond to the petition and shall serve a copy of the response on the chair by certified mail, return receipt requested.

(e) Thereafter, a hearing shall be held on the petition before the circuit court, and an order rendered by the circuit court which:

(1) Dismisses the petition of the committee;

(2) Directs that corrective action be initiated in some form by the local governing body with respect to the criminal detention facility or juvenile detention facility in question; or

(3) Directs that the criminal detention facility or juvenile detention facility be closed.

(f) An appeal from the decision of the circuit court may be taken as provided in the Rules of Appellate Procedure — Civil.

History. Acts 1983, No. 741, §§ 9, 10; 1985, No. 539, § 4; A.S.A. 1947, §§ 46-1218, 46-1219; Acts 1989, No. 515, § 5; 2017, No. 153, § 7; 2017, No. 250, § 19.

Amendments. The 2017 amendment by No. 153 deleted “and to the duly constituted grand jury for the county in which the criminal detention facility or juvenile detention facility is located” from the end of (a)(1); rewrote (a)(2); deleted “or the grand jury, or both” and similar language following “governing body” in (b), (c), (d)(1), and (e)(2); substituted “chair of the criminal detention facility review committee, or the chair’s designee” for “committee chair” in (b); substituted “criminal detention facility or juvenile detention facility” for “detention facility” in (c) and made similar changes in (d); substituted “chair” for “committee chair” in (d)(3); inserted “or juvenile detention facility” in (e)(2)

and (e)(3); substituted “as provided in the Rules of Appellate Procedure — Civil” for “to the Supreme Court” in (f); and made stylistic changes.

The 2017 amendment by No. 250 substituted “criminal detention facility or juvenile detention facility” for “facility” or “detention facility” throughout (a)(2), (c), and (d); deleted “duly constituted” preceding “grand jury” in (a)(1); in (d)(1), substituted “the inspection” for “such inspection”, “portion of the criminal detention facility or juvenile detention facility” for “portion thereof”, and “may” for “is authorized to”; substituted “the circuit court” for “such court” in the introductory language of (e); inserted “or juvenile detention facility” in (e)(2) and (e)(3); and substituted “as provided in the Arkansas Rules of Appellate Procedure” for “to the Supreme Court” in (f).

12-26-109. [Repealed.]

Publisher's Notes. This section, concerning a citizen advisory council, was repealed by Acts 2017, No. 153, § 8. The

section was derived from Acts 2001, No. 1185, § 3.

CHAPTER 27**DIVISION OF CORRECTION — DIVISION OF
COMMUNITY CORRECTION****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. PAY-FOR-SUCCESS ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

- 12-27-101. Purposes and construction of the Division of Correction.
- 12-27-102. Enforcement of penalties — Report of crimes.
- 12-27-103. Division of Correction — Creation — Powers and duties.
- 12-27-104. Board of Corrections — Members — Records — Staff.
- 12-27-105. Board's powers and duties.
- 12-27-106. Publication of rules — Report concerning administrative directives and administrative memoranda filed with Legislative Council.
- 12-27-107. Director of the Division of Correction.
- 12-27-108. Authentication of records.
- 12-27-109. Oaths of director and other authorized persons.
- 12-27-113. Commitments to the Division of Correction — Records.
- 12-27-122. Debt service accounts.
- 12-27-124. Purposes and construction of the Division of Community Correction.
- 12-27-125. Division of Community Correction — Creation — Powers and duties.
- 12-27-126. Director of the Division of Community Correction.
- 12-27-127. Transfer to the Division of Community Correction — Transfer of an inmate between divisions.
- 12-27-128. Division of Correction Nontax Revenue Receipts Fund.
- 12-27-129. Report on rehabilitation.

SECTION.

- 12-27-130. Reimbursement of county.
- 12-27-131. Receipts for reimbursement.
- 12-27-132. Award of pistol upon retirement or death.
- 12-27-134. Probation services.
- 12-27-135. Facility assignment.
- 12-27-136. Services and equipment.
- 12-27-137. Confidentiality of emergency preparedness documents.
- 12-27-139. Notice to police when furloughed inmate will be in jurisdiction.
- 12-27-140. Division of Community Correction annual report.
- 12-27-141. [Repealed.]
- 12-27-142. Medical services contract.
- 12-27-143. Award of service weapon upon retirement or death.
- 12-27-144. Division of Community Correction — Receipt of grant money for certain purposes.
- 12-27-145. Records to be posted on a public website — Definition.
- 12-27-146. Tracking an inmate or person being supervised who is serving a suspended sentence.
- 12-27-147. Rulemaking and administrative directive reporting requirement.
- 12-27-148. Confidentiality of emergency preparedness document of the Division of Community Correction.
- 12-27-149. Division of Community Correction — Sufficient staffing guidelines.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-27-101. Purposes and construction of the Division of Correction.

(a)(1) The purpose of this act is to establish a Division of Correction that shall assume the custody, control, and management of the state penitentiary, execute the orders of criminal courts of the State of Arkansas, and provide for the custody, treatment, rehabilitation, and restoration of adult offenders as useful law-abiding citizens within the community.

(2) The division shall be under the supervision and control of the Board of Corrections.

(3) To accomplish the objectives and purposes of this act in an effective, coordinated, and uniform manner, the division shall be responsible for the maintenance, supervision, and administration of adult detention and correctional services of the state as determined by the board.

(4) Institutions and services shall be diversified in program, construction, and staff to provide effectually and efficiently for the maximum custody, care, supervision, and treatment of those persons committed to the division.

(b) This act shall be liberally construed so as to effectuate its purposes.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 1; A.S.A. 1947, § 46-100; Acts 1993, No. 549, § 1; 2019, No. 910, § 728.

substituted "Division of Correction" for "Department of Correction" and "division" for "department" throughout (a).

Amendments. The 2019 amendment

12-27-102. Enforcement of penalties — Report of crimes.

(a) All laws of this state prescribing penalties for violations concerned with or affecting the state penitentiary or inmates thereof shall be equally applicable to the Division of Correction and shall be enforced accordingly.

(b) In the event any crime shall be committed in any institution of the division, it shall be the duty of the Director of the Division of Correction, or his or her designated employee, to report the crime to the

county sheriff and prosecuting attorney of the county in which the institution is located in which the crime, or alleged crime, took place.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 22; A.S.A. 1947, § 46-131; Acts 2019, No. 910, § 729.

substituted "Division of Correction" for "Department of Correction" in (a) and (b); and "division" for "department" in (b).

Amendments. The 2019 amendment

12-27-103. Division of Correction — Creation — Powers and duties.

(a) There is established, under the supervision, control, and direction of the Board of Corrections, a Division of Correction.

(b) The Division of Correction shall have the following functions, powers, and duties, administered in accordance with the policies and rules promulgated by the Board of Corrections:

(1) The Division of Correction shall have exclusive jurisdiction over the care, charge, custody, control, management, administration, and supervision of all persons and offenders committed to, or in the custody of, the state penitentiary;

(2) The Division of Correction shall maintain management and control over all properties, both real and personal, facilities, books, records, equipment, supplies, materials, contracts, funds, moneys, equities, and all other properties belonging to the state penitentiary, except those deemed by the Board of Corrections to be placed in the Division of Community Correction. The Division of Correction shall administer said properties in accordance with the provisions of this act and other laws applicable to the administration of the state correctional system;

(3) The Department of Correction, as the Division of Correction was known as prior to July 1, 2019, assumed all obligations, contracts, indebtedness, liabilities, and other obligations of the state penitentiary system existing on March 1, 1968;

(4)(A) The Department of Correction, as the Division of Correction was known as prior to July 1, 2019, has custody, management, and control over all institutions and facilities, and the inmates therein, belonging to the state penitentiary or hereafter established by the Department of Correction, as the Division of Correction was known as prior to July 1, 2019, and known as the Division of Correction for the custodial correction and rehabilitation of persons committed to the Division of Correction for its care, except for those institutions established by or transferred to the Division of Community Correction.

(B) Legal custody of inmates transferred to the Division of Community Correction shall remain with the Division of Correction unless altered by court order;

(5) The Division of Correction shall establish and operate classification committees, diagnosis and treatment programs, and such other programs as may be desirable to fulfill the purposes of this act;

(6) The Division of Correction shall employ such officers, employees, and agents and shall secure such offices and quarters as are deemed necessary to discharge the functions of the Division of Correction;

(7) The Division of Correction shall receive all offenders committed to the Division of Correction for conviction of felonies or other offenses, the punishment of which is commitment to the penitentiary under the laws of this state, and shall be responsible for the care, custody, and correction of such persons pursuant to policies established by the Board of Corrections;

(8) The Division of Correction shall operate all farming, livestock, industries, and other income-producing facilities of the Division of Correction and shall sell the products of its industries and farms in the manner provided by law;

(9) The Division of Correction may establish and operate regional adult detention facilities, provided funds therefor have been authorized and appropriated by the General Assembly;

(10) The Division of Correction shall cooperate with municipalities and counties in this state in providing consulting services when requested with respect to detention and correctional facilities operated by the municipalities or counties;

(11) The Division of Correction shall cooperate with law enforcement agencies of this state, the United States, institutions of this state for the detention, custody, and care of delinquent and dependent juveniles, and with all agencies and departments of this state offering services or programs of welfare, rehabilitation, and other services for the benefit of persons committed to the Division of Correction;

(12) The Division of Correction may accept gifts, grants, and funds from public and private sources with prior approval of the Board of Corrections and administer the same in furtherance of the purposes of this act;

(13)(A) The Division of Correction shall have the authority to issue warrants for the retaking of any person who, committed to its custody, unlawfully escapes therefrom.

(B) The warrant shall:

(i) Authorize all law enforcement officials of this state to take custody and return the person named therein to the custody of the Division of Correction; and

(ii) Authorize all law enforcement officials of this state, any other state, and the federal government to take custody and detain the person in any suitable detention facility while awaiting further transfer to the Division of Correction;

(14)(A)(i) Subject to the approval of the Governor, the Division of Correction may cooperate with and contract with the federal government, governmental agencies of Arkansas and other states, political subdivisions of Arkansas, political subdivisions of other states, counties, regional correctional facilities, and private contractors to provide and improve correctional operations and to keep custody of inmates transferred from the Division of Correction.

(ii) A facility owned or leased under this subdivision (b)(14) shall comply with all constitutional standards of the United States and the State of Arkansas.

(B) A county may contract for construction or operation or both with another entity to house a Division of Correction inmate under this subdivision (b)(14) for a period not to exceed twenty (20) years;

(15) The Division of Correction shall cooperate with the Division of Community Correction, the Parole Board, the Arkansas Sentencing Commission, judicial districts, municipalities, and counties in this state in providing guidance and services required to ensure a full range of correctional options for the state as a whole;

(16) The Division of Correction shall provide support to the Division of Community Correction as determined by the Board of Corrections;

(17) The Division of Correction shall assist the Board of Corrections in the furtherance of its goals by staffing the specific charges articulated for it through legislation and by the Board of Corrections; and

(18) The Department of Corrections shall establish programs of research, evaluation, statistics, audit, and planning, including studies and evaluation of the performance of various functions and activities of the department and studies affecting the treatment of offenders and information about other programs.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 3; 1977, No. 935, § 1; A.S.A. 1947, § 46-103; Acts 1993, No. 549, § 2; 2011, No. 184, § 1; 2015, No. 1206, § 1; 2019, No. 315, § 878; 2019, No. 910, § 730.

Amendments. The 2019 amendment by No. 315 substituted “policies and rules” for “policies, rules, and regulations” in the introductory language of (b).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” in the section

heading and throughout the section, except for (b)(18) in which “Department of Corrections” was substituted for “Department of Correction”; in (b)(2), substituted “maintain” for “assume”; inserted “as the Division of Correction was known as prior to July 1, 2019” in (b)(3); rewrote (b)(4)(A); substituted “Division of Community Correction” for “Department of Community Correction” in (b)(4)(B), (b)(15), and (b)(16); and made stylistic changes.

12-27-104. Board of Corrections — Members — Records — Staff.

(a) The Board of Corrections shall be composed of seven (7) voting members:

(1) Five (5) citizen members;

(2) The chair of the Parole Board; and

(3) One (1) member of a criminal justice faculty who is employed at any four-year university in Arkansas.

(b) The Board of Corrections shall elect a chair annually in accordance with rules developed by the Board of Corrections.

(c)(1) All members of the Board of Corrections shall serve a term of seven (7) years, unless they resign or are removed.

(2) Vacancies occurring before the expiration of a term shall be filled in the manner provided for members first appointed.

(3) Members shall serve until their replacements are appointed.

(4) The Governor shall appoint those members not determined by virtue of their office when vacancies occur.

(d)(1)(A) A member of the Board of Corrections may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(B) However, a member shall receive a per diem stipend and reimbursement for expenses for both official meetings and related activities associated with attending to the business of the Board of Corrections, the Division of Correction, the Division of Community Correction, and the Corrections School System for up to an annual average of seven (7) days per month.

(C) The reimbursement for use of private airplanes shall be in accordance with state travel rules.

(D) A public university employee or other state employee who serves on the Board of Corrections is allowed to receive a per diem stipend and reimbursement of expenses for both official meetings and related activities associated with attending to the business of the Board of Corrections.

(2) All expenses that may be reimbursed to members of the Board of Corrections and stipends as provided in § 25-16-901 et seq. shall be payable from the maintenance funds appropriated for the Division of Correction and the Division of Community Correction.

(e) The Governor shall appoint an advisory judicial group to facilitate coordination among the judicial system, the Division of Correction, and the Division of Community Correction to promote the effective and efficient use of correctional resources in furtherance of sentencing policy adopted by the General Assembly.

(f) The Board of Corrections, in cooperation with the Governor, may establish additional advisory groups composed of professionals from the criminal justice system and citizens representing specific criminal justice interest groups to assist the Board of Corrections in its charge.

(g) The Board of Corrections shall meet no less than quarterly.

(h) The Board of Corrections shall submit to the Governor and the General Assembly a biennial report six (6) months prior to the convening of the regular session.

(i)(1) The Board of Corrections shall keep regular minutes of all its meetings, visits, and proceedings and shall cause the minutes, together with all orders and rules adopted by it, to be recorded in a book which shall be kept by the secretary of the Board of Corrections for that purpose.

(2) The record shall be signed by the members of the Board of Corrections present at the meeting or visit and shall at all times be open to the inspection of the Governor or any member of the General Assembly.

(j)(1) The Board of Corrections shall employ necessary staff to assist with the range and diversity of the charge of the Board of Corrections.

(2) In addition to Board of Corrections staff, the Board of Corrections may reassign staff from the divisions it governs for either short-term or long-term service to the Board of Corrections.

History. Acts 1893, No. 76, § 46, p. 121; C. & M. Dig., § 9719; Acts 1919, No. 482, § 4; Pope's Dig., § 12750; Acts 1968 (1st Ex. Sess.), No. 50, § 2; 1975, No. 378, § 12; 1979, No. 661, § 1; 1979, No. 918, § 1; 1980 (1st Ex. Sess.), No. 37, § 1; 1985, No. 734, § 1; A.S.A. 1947, §§ 7-203.2, 46-101, 46-102; Acts 1989, No. 708, § 1; 1989, No. 937, § 4; 1993, No. 549, § 3; 1994 (2nd Ex. Sess.), No. 26, § 1; 1997, No. 250, § 71; 2009, No. 958, § 1; 2009, No. 962, § 29; 2019, No. 315, §§ 879, 880; 2019, No. 910, §§ 731-734.

Amendments. The 2019 amendment

by No. 315 deleted "and regulations" following "rules" in (b); and substituted "orders and rules" for "orders, rules, and regulations" in (i)(1).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout (d) and (e); and substituted "the charge of the Board of Corrections" for "its charge" in (j)(1), and substituted "divisions" for "departments" in (j)(2).

12-27-105. Board's powers and duties.

(a) The purpose of the Board of Corrections is to manage correctional resources in the state such that offenders are held accountable for their actions, victims' needs are addressed in a positive manner, and the safety of society is enhanced.

(b) In furtherance of its purpose, the Board of Corrections shall have the following powers and duties:

(1)(A) General supervisory power and control over the Division of Correction and the Division of Community Correction and shall perform all functions with respect to the management and control of the adult correctional institutions and community correction options of this state contemplated by Arkansas Constitution, Amendment 33.

(B) No provision of this act shall abridge, diminish, or curtail in any respect the authority vested in the Board of Corrections as the successor to the State Penitentiary Board and the Arkansas Adult Probation Commission to govern and supervise the administration of the state penal institutions and community correction options;

(2) To coordinate resources for the corrections system, in conjunction with sentencing policy developed by the Arkansas Sentencing Commission, in a fashion that best serves the needs of the state, the entities encompassed, and the individuals served by and affected by corrections;

(3) To review and approve budgets submitted by the Division of Correction and the Division of Community Correction prior to submission for executive and legislative approval;

(4) To develop and approve policy and management decisions for the Division of Correction and the Division of Community Correction, evaluating their impact on corrections as a whole;

(5) To assist in the development of impact statements and recommendations on all existing and proposed legislation with regard to its effect on corrections as a whole, in cooperation and coordination with the commission;

(6) To coordinate the implementation and continued utilization of community correction options in support of sentencing policies developed by the commission;

(7) To investigate, monitor, and address the needs of the state for adequate housing, treatment, and employment of individuals involved

in state-funded correctional programs, facilities, and states of supervision;

(8) To establish programs of research, statistics, and planning, including studies and evaluation of the performance of the various functions and activities of the board, in cooperation and coordination with the commission;

(9) Appoint temporary or permanent advisory committees for such purposes as it may determine;

(10)(A) Authorized and empowered to investigate, consider, and determine the needs of the state for adequately housing, treating, and employing prisoners of the state and to provide adequate facilities for such housing, treatment, and employment.

(B) The Board of Corrections is authorized and empowered to obtain and approve plans and specifications for the necessary buildings and plants to meet such needs and to provide for the construction and equipment of such buildings and plants;

(11) By and with the advice and approval of the Governor, at its discretion to close the operation of any penal institution if it deems such action necessary and more economical;

(12) To establish minimum standards for supervision, contact, programming, housing, and employee hiring within the parameters of those divisions encompassed under its control;

(13) To establish a code of ethics for all employees, both institutional and community correction;

(14) To require and review annual audits of appropriate programs and facilities associated with the Board of Corrections;

(15) To prescribe the duties of all personnel of the Division of Correction and the Division of Community Correction and the rules governing the transfer of employees within each division and between divisions;

(16) Authorized to review, approve, make application for, and accept grants, gifts, and funds from any entity on behalf of any entity encompassed within the control of the Board of Corrections in carrying out and completing such projects as may be approved for the enumerated purposes and projects of this section;

(17)(A) Authorized to establish fees to be levied by the courts and paid by probationers during the probationary period.

(B) The Board of Corrections may also establish fees found necessary for participation in any community correction program or service.

(C) The payment of such sanctions and fees may be a condition of probation, parole, post prison transfer, or attached to admission and participation in a community correction program.

(D) The moneys collected shall be deposited into an earmarked account at the state level to be used solely for the continuation and expansion of community correction in this state.

(E) Economic sanction officers are to be authorized by the Division of Community Correction to perform these duties pursuant to policies

and procedures adopted by the Board of Corrections and in accord with any state statutory accounting requirements; and

(18) To delegate duties to Board of Corrections staff and division staff as necessary and appropriate to fulfill its responsibilities to the state.

History. Acts 1933, No. 30, § 28; Pope's Dig., §§ 12695, 12775, 12776; Acts 1937, No. 140, §§ 2, 3; 1945, No. 13, §§ 2, 3; 1968 (1st Ex. Sess.), No. 50, § 2; 1975, No. 378, § 12; A.S.A. 1947, §§ 46-101, 46-108 — 46-110; Acts 1993, No. 549, § 4; 2013, No. 1277, § 2; 2019, No. 315, § 881; 2019, No. 910, §§ 735-738.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b)(15).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout (b), and substituted "each division and between divisions" for "each department and between departments" in (b)(15).

12-27-106. Publication of rules — Report concerning administrative directives and administrative memoranda filed with Legislative Council.

(a) The Board of Corrections shall make available in conspicuous places all rules promulgated by the board with reference to the conduct of the persons committed to or housed in correctional facilities that are operated or contracted by the divisions and agencies the board governs.

(b)(1) Except as provided in subdivision (b)(2) of this section, the board shall file a report with the Legislative Council on a quarterly basis containing all new and revised administrative directives and administrative memoranda issued in the previous quarter by:

(A) The board;

(B) The Director of the Division of Correction;

(C) The Director of the Division of Community Correction; and

(D) Staff of the Division of Correction and the Division of Community Correction.

(2) The report under subdivision (b)(1) of this section shall not include information that is confidential under § 12-27-137.

History. Acts 1933, No. 30, § 11; Pope's Dig., § 12655; A.S.A. 1947, § 46-132; Acts 2015, No. 1258, § 14; 2019, No. 315, § 882; 2019, No. 396, § 1.

Amendments. The 2019 amendment by No. 315 substituted "rules and laws" for "rules, laws, and regulations" in (a).

The 2019 amendment by No. 396 deleted "laws" following "Publication of rules" in the section heading; rewrote (a); and made a stylistic change in (b)(1)(D).

12-27-107. Director of the Division of Correction.

(a) The Director of the Division of Correction, who shall be the executive, administrative, budgetary, and fiscal officer of the Division of Correction, shall be appointed by the Board of Corrections at a salary fixed by the Board of Corrections which shall not exceed the maximum salary for the position established by law.

(b) The director shall be qualified for the position by character, ability, education, training, and successful administrative experience in correctional or related fields.

(c) The director shall serve at the pleasure of the Board of Corrections.

(d) Subject to the rules, policies, and procedures prescribed by the Board of Corrections, the director shall:

(1) Administer the Division of Correction and supervise the administration of all institutions, facilities, and services under the jurisdiction of the Division of Correction;

(2) Employ such personnel as are required in the administration of the provisions of this act, provided that the employment of personnel shall be in accordance with the applicable laws and personnel rules of the state;

(3) Institute programs for the training and development of personnel within the Division of Correction and have authority to suspend, discharge, or otherwise discipline personnel in accordance with policies prescribed by the Board of Corrections;

(4) Make an annual report to the Board of Corrections, which will be forwarded to the Governor and the General Assembly, on the work of the Division of Correction, including statistics and other data, income derived by the Division of Correction from agriculture, livestock, and other farming activities and from prison inmates' activities, a summary of expenditures of the Division of Correction, and progress reports regarding internal issues such as inmate discipline, utilization of programming, facilities and bed space utilization, upkeep issues, and construction needs;

(5) Cooperate with the Division of Community Correction, the Parole Board, the Arkansas Sentencing Commission, judicial districts, counties, and municipalities to provide the guidance and services required to ensure a full range of correctional options for the state as a whole; and

(6)(A) Designate those employees of the Division of Correction who shall have the powers of peace officers in the enforcement of criminal laws to the extent they apply to employees, inmates, and persons on Division of Correction property, while participating in the search and capture of an inmate who has escaped custody, or while assisting law enforcement officers in the search and capture of any fugitive or escapee from another jurisdiction.

(B) The employees so designated have the authority to use blue rotating or flashing emergency lights on Division of Correction vehicles and exercise other law enforcement powers exercised by police and other law enforcement personnel.

History. Acts 1968 (1st Ex. Sess.), No. 50, §§.4, 5; 1975, No. 733, § 1; A.S.A. 1947, §§ 46-104, 46-105; Acts 1993, No. 549, § 5; 1997, No. 943, § 1; 2003, No. 351, § 1; 2019, No. 315, § 883; 2019, No. 910, § 739.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in the introductory language of (d); and substituted "rules" for "regulations" in (d)(2).

The 2019 amendment by No. 910 sub-

stituted "Division of Correction" for "Department of Correction" throughout the section; and substituted "Division of Community Correction" for "Department of Community Correction" in (d)(5).

12-27-108. Authentication of records.

(a) For authentication of the records, process, and proceedings of the Division of Correction, the Director of the Division of Correction may adopt and keep an official seal for the use of his or her office, and the seal shall receive judicial notice in all of the courts of the state.

(b) All acts, orders, reports, and other records of the division or copies thereof which are entitled to judicial notice shall be certified to by the director with the seal affixed thereto.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 4; 1975, No. 733, § 1; A.S.A. 1947, § 46-104; Acts 2019, No. 315, § 884; 2019, No. 910, § 740.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "orders" in (b).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" twice in (a); and substituted "division" for "department" in (b).

12-27-109. Oaths of director and other authorized persons.

The Director of the Division of Correction and each person authorized by the Board of Corrections to assume the duties of the director on an interim or acting basis shall, before discharging his or her prescribed duties, take and subscribe to and file in the office of the Secretary of State, an oath that he or she will support the United States Constitution and the Arkansas Constitution and faithfully perform the prescribed duties upon which he or she is about to enter.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 4; 1975, No. 733, § 1; A.S.A. 1947, § 46-104; 2019, No. 208, § 1; 2019, No. 910, § 741.

A.C.R.C. Notes. Acts 2019, No. 910, § 741, amended this section to replace "Department" with "Division" in the phrase "of the superintendents of the institutions within the Department of Correction". However, Acts 2019, No. 208, § 1, specifically repealed this phrase.

Amendments. The 2019 amendment by No. 208 substituted "other authorized persons" for "superintendents" in the section heading; substituted "person authorized by the Board of Corrections to assume the duties of the director on an interim or acting basis" for "of the superintendents of the institutions within the Department of Correction", substituted "discharging his or her prescribed duties" for "entering upon their respective duties", and inserted the second occurrence of "prescribed".

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction".

12-27-113. Commitments to the Division of Correction — Records.

(a)(1) All commitments to the Division of Correction shall be to the Division of Correction and not to a particular institution.

(2) Commitments may provide for judicial transfer to the Division of Community Correction.

(b)(1) The Director of the Division of Correction, in accordance with the rules and procedures promulgated by the Board of Corrections shall transfer an inmate to the Division of Community Correction, pursuant to a judicial transfer, or assign a newly committed inmate to an appropriate facility of the Division of Correction.

(2) The director may transfer an inmate from one (1) facility to another consistent with the commitment and in accordance with treatment, training, and security needs.

(3) Inmates may be transferred between the Division of Correction and the Division of Community Correction within the constraints of law applicable to judicial transfer, subject to the policies, rules, and regulations established by the Board of Corrections, and conditions set by the Parole Board.

(4) The Division of Correction shall retain legal custody of all inmates transferred to community correction unless altered by court order.

(c)(1) When a prisoner is committed to the Division of Correction, his or her commitment papers must include a report on the circumstances attending the offense, particularly such circumstances as tend to aggravate or extenuate the offense, which report shall be kept in the permanent file of such prisoner.

(2) The report shall be prepared by the prosecutor or deputy prosecutor who represented the state in the proceeding against the prisoner. The report shall be approved by the sentencing judge.

(d)(1) A county sheriff, a deputy county sheriff, or a trained security contractor shall transport all inmates committed to the Division of Correction or the Division of Community Correction as described in this subsection, and the county sheriff is entitled to the fees provided by law.

(2) A county sheriff shall notify the director of the number of inmates in his or her charge who are under commitment to the Division of Correction, and upon request to the county sheriff by the director, the county sheriff, the deputy county sheriff, or the trained security contractor shall send for, take charge of, and safely transport the inmates to the nearest appropriate facility as determined by the Division of Correction or the Division of Community Correction.

(3) However, if the county sheriff determines that it would be in the best interest of an inmate and the public to immediately transport the inmate to the Division of Correction or the Division of Community Correction because of overcrowding or another issue, the county sheriff may notify the Division of Correction or the Division of Community Correction of the need for immediate transport and the Division of Correction or the Division of Community Correction shall consider the request in scheduling inmates for intake.

(e)(1) The director shall make and preserve a full and complete record of every inmate committed to the Division of Correction, along with a photograph of the inmate and data pertaining to his or her trial conviction and past history.

(2)(A) To protect the integrity of records described in subdivision

(e)(1) of this section and to ensure their proper use, it is unlawful to

permit inspection of or disclose information contained in records described in subdivision (e)(1) of this section or to copy or issue a copy of all or part of a record described in subdivision (e)(1) of this section except:

- (i) As authorized by rule;
- (ii) By order of a court of competent jurisdiction; or
- (iii) Records posted on the Division of Correction's website as required by § 12-27-145.

(B) A rule under subdivision (e)(2)(A) of this section shall provide for adequate standards of security and confidentiality of records described in subdivision (e)(1) of this section.

(3) For those inmates committed to the Division of Correction and judicially transferred to the Division of Community Correction, the preparation of a record described in subdivision (e)(1) of this section may be delegated to the Division of Community Correction pursuant to policies applicable to records transmission adopted by the Board of Corrections.

(4) A rule under subdivision (e)(2)(A) of this section may authorize the disclosure of information contained in a record described in subdivision (e)(1) of this section for research purposes.

(5)(A)(i) Upon written request, an employee of the Bureau of Legislative Research acting on behalf of a member of the General Assembly may view all records described in subdivision (e)(1) of this section of a current or former inmate.

(ii) A request under subdivision (e)(5)(A)(i) of this section shall be made in good faith.

(B) A view of records under this subdivision (e)(5) by an employee may be performed only if the employee is assigned to one (1) or more of the following committees:

- (i) Senate Committee on Judiciary;
- (ii) House Committee on Judiciary; or
- (iii) Charitable, Penal, and Correctional Institutions Subcommittee of the Legislative Council.

(C) The Division of Correction shall ensure that the employee authorized under subdivision (e)(5)(B) of this section to view records is provided access to the records.

(D) A record requested to be viewed under this subdivision (e)(5) is privileged and confidential and shall not be shown to any person not authorized to have access to the record under this section and shall not be used for any political purpose, including without limitation political advertising, fundraising, or campaigning.

History. Acts 1933, No. 30, § 13; Pope's 1171, § 1; 2015, No. 1265, § 5; 2019, No. Dig., § 12658; Acts 1968 (1st Ex. Sess.), 315, § 885.
No. 50, §§ 6, 19, 38; A.S.A. 1947, §§ 46-106 — 46-106.2, 46-135; Acts 1989, No. 897, § 1; 1993, No. 549, § 6; 2001, No. 615, § 1; 2015, No. 895, § 7; 2015, No.

Amendments. The 2019 amendment substituted "rules and procedures" for "rules, procedures, and regulations" in (b)(1).

12-27-122. Debt service accounts.

(a)(1) The Division of Correction may establish accounts in financial institutions other than the State Treasury for the purpose of making debt service payments on bonds issued, or leases, or both, through the Arkansas Development Finance Authority and as otherwise authorized by law.

(2) The accounts shall be entitled the "Construction Fund Deficiency Account", the "Prisoner Housing Contract Account", and the "Regional Facilities Operations Account".

(3) Receipts into the Construction Fund Deficiency Account, the Prisoner Housing Contract Account, and the Regional Facilities Operations Account shall be from transfers from the work-release cash funds, payments to the division for housing county and city prisoners in regional facilities, and such other sources as required.

(b) Payments made by the division from the work-release cash funds, Construction Fund Deficiency Account, Prisoner Housing Contract Account, and the Regional Facilities Operations Account which are made for bonded indebtedness or leases of regional correction facilities, or both, are specifically exempt from §§ 19-4-801 — 19-4-803, 19-4-805, and 19-4-806.

History. Acts 1989, No. 819, §§ 1, 2; 2017, No. 250, § 20.

Amendments. The 2017 amendment substituted "may" for "is authorized to" in (a)(1); substituted "Construction Fund Deficiency Account, the Prisoner Housing

Contract Account, and the Regional Facilities Operations Account" for "accounts so established" in (a)(3); and substituted "§§ 19-4-801 — 19-4-803" for "the provisions of §§ 19-4-801 — 19-4-803, 19-4-804 [repealed]" in (b).

12-27-124. Purposes and construction of the Division of Community Correction.

(a)(1) The purpose of this act is to establish a Division of Community Correction that shall assume the management of all community correction facilities and services, execute the orders of the criminal courts of the State of Arkansas, and provide for the supervision, treatment, rehabilitation, and restoration of adult offenders as useful law-abiding citizens within the community.

(2) The division shall be under the supervision and control of the Board of Corrections.

(3) To accomplish the objectives and purposes of this act in an effective, coordinated, and uniform manner, the division shall be responsible for the administration of all community correction facilities, services, and means of supervision, including probation and parole or any type of post-prison release or transfer.

(4) Facilities and services shall be diversified in program, construction, and staff to provide effectually and efficiently for the maximum care, supervision, and treatment of those persons accessing the division.

(b) This act shall be liberally construed so as to effectuate its purposes.

History. Acts 1993, No. 549, § 7; 2019, No. 910, § 742.

Amendments. The 2019 amendment substituted "Division of Community Cor-

rection" for "Department of Community Correction" in the section heading and (a)(1); and substituted "division" for "department" in (a)(2) through (a)(4).

12-27-125. Division of Community Correction — Creation — Powers and duties.

(a) There is established, under the supervision, control, and direction of the Board of Corrections, a Division of Community Correction.

(b) The Division of Community Correction shall have the following functions, powers, and duties, administered in accordance with the policies and rules promulgated by the Board of Corrections:

(1) It shall assume management and control over all properties, both real and personal, facilities, books, records, equipment, supplies, materials, contracts, funds, moneys, equities, and all other properties belonging to the Arkansas Adult Probation Commission [abolished], and all such properties transferred from the Department of Correction, as the Division of Correction was known as prior to July 1, 2019, by the Board of Corrections;

(2)(A) It shall have management and control over all community correction services.

(B) It shall have management and control over all community correction facilities within the purview of the Board of Corrections existing on or created after July 1, 1993;

(3) It shall employ such officers, employees, and agents and shall secure such offices and quarters as deemed necessary to discharge the functions of the Division of Community Correction, and which are appropriately funded;

(4) It may establish and operate regional community correction facilities if funds for the regional community correction facilities have been authorized and appropriated by the General Assembly;

(5)(A) It may exercise all legally sanctioned supervision and appropriate care over all offenders referred with proper documentation from the circuit courts and all offenders transferred with proper documentation from the Division of Correction pursuant to policies established by the Board of Corrections and conditions set by the Parole Board.

(B) Legal custody remains with the referring court or the Division of Correction;

(6) It shall administer the provision of probation services for offenders processed through circuit courts;

(7) It shall administer the provision of parole services in coordination with the Parole Board and in cooperation with the Division of Correction;

(8) It shall provide support services to the Parole Board or its designated representatives as determined by the Parole Board;

(9) It shall assist the Board of Corrections in the furtherance of its goals by staffing the specific charges articulated for it through legislation and by the Board of Corrections;

(10) It shall conduct statewide public education and training to foster the provision of correctional supervision and service in community settings;

(11) It shall provide technical assistance when necessary to any entity, program, division, or agency receiving assistance or clients through the Division of Community Correction;

(12) It shall facilitate the development of a comprehensive community correction plan through the provision of funding, criteria review, and ongoing evaluation to ensure the maintenance of quality in supervision and programming;

(13) It may accept gifts, grants, and funds from both public and private sources with prior approval of the Board of Corrections;

(14) It shall establish minimum standards for case loads, programs, facilities, and equipment and other aspects of the operation of community correction programs and facilities necessary for the provision of adequate and effective supervision and service;

(15) It shall establish minimum standards for the employment of community correction employees;

(16) It shall establish programs of research, evaluation, statistics, audit, and planning, including studies and evaluation of the performance of various functions and activities of the Department of Corrections and studies affecting the treatment of offenders and information about other programs;

(17)(A) It may receive and disburse moneys ordered to be paid by offenders pursuant to statutory economic sanctions.

(B) It may receive fees to be levied by the courts or authorized by the Board of Corrections for participation in specified programs and to be paid by offenders on community correction.

(C) The payment of such sanctions and fees may be a condition of probation, parole, or post prison transfer or attached to admission and participation in a community correction program.

(D) The moneys collected shall be deposited into an earmarked account at the state level to be used solely for the continuation and expansion of community correction in this state.

(E) Economic sanction officers are to be authorized by the Division of Community Correction to perform these duties pursuant to policies and procedures adopted by the Board of Corrections and in accord with any state statutory accounting requirements;

(18) It may cooperate and contract with the federal government, with governmental agencies of Arkansas and other states, with political subdivisions of Arkansas, and with private contractors to provide and improve community correction options;

(19) It may inspect and evaluate any community correction site and conduct audits of financial and service records at any reasonable time to determine compliance with the Board of Corrections' rules and standards;

(20)(A) It shall maintain a full and complete record of each offender under its supervision.

(B)(i) To protect the integrity of a record described in subdivision (b)(20)(A) of this section and to ensure its proper use, it is unlawful to permit inspection of or disclose information contained in a record described in subdivision (b)(20)(A) of this section or to copy or issue a copy of any part of the record except:

(a) As authorized by administrative rule;

(b) By order of a court of competent jurisdiction; or

(c) Records posted on the Division of Community Correction's website as required by § 12-27-145.

(ii) The rules under subdivision (b)(20)(B)(i)(a) shall provide for adequate standards of security and confidentiality of a record described in subdivision (b)(20)(A) of this section;

(21) Subject to availability of funds, it shall employ officers, employees, and agents and secure sufficient offices for monitoring each sex offender on parole or probation who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who has been assessed as a risk Level 3 or Level 4 offender; and

(22)(A) It may issue an arrest warrant for the arrest of any person who, while in its custody, unlawfully escapes from the Division of Community Correction.

(B) The arrest warrant shall authorize:

(i) All law enforcement officers of this state to take into custody and return the person named in the arrest warrant to the custody of the Division of Community Correction or the Division of Correction; and

(ii) All law enforcement officers of this state, any other state, or the federal government to take into custody and detain the person in a suitable detention facility while awaiting further transfer to the Division of Community Correction or the Division of Correction.

History. Acts 1993, No. 549, § 7; 1997, No. 280, § 1; 2006 (1st Ex. Sess.), No. 4, § 8; 2015, No. 145, §§ 1, 2; 2015, No. 1265, § 6; 2019, No. 315, § 886; 2019, No. 910, § 743.

A.C.R.C. Notes. Acts 2019, No. 160, § 1, provided: "The Department of Community Correction may, with consent of the Board of Corrections and the Governor, donate the former site of the Southeast Arkansas Community Correction Center in Pine Bluff to an Arkansas-based nonprofit organization serving veterans of the United States Armed Forces if the proposed use by the nonprofit organization includes services approved by the Board of Corrections for veterans released from incarceration."

Amendments. The 2019 amendment by No. 315 substituted "policies and rules"

for "policies, rules, and regulations" in the introductory language of (b); and deleted "regulations" following "rules" in (b)(19).

The 2019 amendment by No. 910 substituted "Division of Community Correction" for "Department of Community Correction" in the section heading and throughout the section, except in (b)(16), which substituted "Department of Corrections" for "Department of Community Correction"; substituted "transferred from the Department of Correction, as the Division of Correction was known as prior to July 1, 2019," for "deemed appropriate for transfer from the Department of Correction" in (b)(1); and substituted "Division of Correction" for "Department of Correction" in (b)(5), (b)(7), (b)(22)(B)(i), and (b)(22)(B)(ii).

12-27-126. Director of the Division of Community Correction.

(a) The Director of the Division of Community Correction shall be appointed by the Board of Corrections at a salary fixed by the Board of Corrections, which shall not exceed the maximum salary for the position established by law.

(b) The director shall be qualified for the position by character, ability, education, training, and successful administrative experience in correctional, community correction, or related fields.

(c) The director shall serve at the pleasure of the Board of Corrections.

(d) Subject to the rules, policies, and procedures prescribed by the Board of Corrections, the director shall:

(1) Administer the Division of Community Correction and supervise the administration of all facilities, programs, and services under the Division of Community Correction's jurisdiction;

(2) Employ such personnel as are required in the administration of the provisions of this act, provided that the employment of personnel shall be in accordance with the applicable laws and personnel rules of the state;

(3) Institute programs for the training and development of personnel within the Division of Community Correction and have authority to suspend, discharge, or otherwise discipline personnel in accordance with policies prescribed by the Board of Corrections;

(4) Make an annual report to the Board of Corrections, which will be forwarded to the Governor and the General Assembly, on the work of the Division of Community Correction, including statistics and other data, income derived from fee collection, a summary of expenditures of the Division of Community Correction, and progress reports regarding internal issues such as offender success, programming development, bed space utilization, and future needs; and

(5) Cooperate with the Division of Correction, the Parole Board, the Arkansas Sentencing Commission, judicial districts, counties, and municipalities to provide the guidance and services required to ensure a full range of correctional and community correction options for the state as a whole.

History. Acts 1993, No. 549, § 7; 2019, No. 315, § 887; 2019, No. 910, §§ 744-746.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in the introductory language of (d); and substituted "rules" for "regulations" in (d)(2).

The 2019 amendment by No. 910 substituted "Division of Community Correction" for "Department of Community Correction" in (a) and throughout (d); and substituted "Division of Correction" for "Department of Correction" in (d)(5).

**12-27-127. Transfer to the Division of Community Correction —
Transfer of an inmate between divisions.**

(a) A commitment shall be treated as a commitment to the Division of Correction and subject to regular transfer eligibility unless:

(1) The commitment specifies that the inmate is to be judicially transferred to the Division of Community Correction; or

(2) If the court indicates on the commitment that the Division of Correction shall administratively determine the transfer of an inmate, the Division of Correction may administratively transfer a statutorily eligible inmate to the Division of Community Correction in accordance with rules promulgated by the Board of Corrections.

(b)(1) In accordance with rules and procedures promulgated by the Board of Corrections and the orders of the committing court, the Director of the Division of Community Correction shall assign a newly transferred inmate to an appropriate facility, placement, program, or status within the Division of Community Correction.

(2) The director may transfer an inmate from one facility, placement, program, or status to another facility, placement, program, or status consistent with the commitment, applicable law, and in accordance with treatment, training, and security needs.

(3)(A) An inmate may be administratively transferred back to the Division of Correction from the Division of Community Correction by the Parole Board following a hearing in which the inmate is found ineligible for placement in a Division of Community Correction facility as he or she fails to meet the criteria or standards established by law or policy adopted by the Board of Corrections or has been found guilty of a violation of the rules of the facility.

(B) Time served in a community correction facility or under supervision by the Division of Community Correction shall be credited against the sentence contained in the commitment to the Division of Correction.

(c)(1) In accordance with rules and procedures promulgated by the Board of Corrections, or except as otherwise prohibited by subdivision (c)(4) of this section, upon receipt of a referral from the director or his or her designee, the Parole Board may release from confinement an inmate who has been:

(A) Sentenced and judicially or administratively transferred to the Division of Community Correction;

(B) Incarcerated for a minimum of one hundred eighty (180) days; and

(C) Determined by the Division of Community Correction to have successfully completed its therapeutic program.

(2)(A) The General Assembly finds that the power granted to the Parole Board under subdivision (c)(1) of this section will:

(i) Aid the therapeutic rehabilitation of the inmates judicially or administratively transferred to the Division of Community Correction; and

(ii) More efficiently use the correctional resources of the State of Arkansas.

(B) The power granted to the Parole Board under subdivision (c)(1) of this section shall be the sole authority required for the accomplishment of the purposes set forth in this subdivision (c)(2), and when the Parole Board exercises its power under this section, it shall not be necessary for the Parole Board to comply with general provisions of other laws dealing with the minimum time constraints as applied to release eligibility.

(3) This subsection does not grant the Parole Board or the Division of Community Correction the authority either to detain an inmate beyond the sentence imposed upon him or her by a transferring court or to shorten that sentence.

(4) An inmate may not be released from confinement under this section if the inmate was sentenced and judicially or administratively transferred to the Division of Community Correction at a time earlier than that which would otherwise be possible if the inmate was sentenced to the Division of Correction, regardless of any program completed by the inmate.

(d)(1) An inmate of the Division of Correction who is to be released on parole may be administratively transferred to the Division of Community Correction when the inmate is within eighteen (18) months of his or her projected release date for the purpose of participating in a reentry program of at least six (6) months in length.

(2) Each inmate administratively transferred under this subsection shall be thoroughly screened and approved for participation by the director or his or her designee.

(3) In accordance with rules promulgated by the Board of Corrections, upon receipt of a referral from the director or his or her designee, the Parole Board may release from incarceration an inmate who has been:

(A) Administratively transferred to the Division of Community Correction; and

(B) Determined by the Division of Community Correction to have successfully completed its reentry program.

(4) An inmate who has been administratively transferred under this subsection shall be administratively transferred back to the Division of Correction if he or she:

(A) Is denied parole; or

(B) Fails to complete or is removed from the reentry program.

History. Acts 1993, No. 549, § 8; 1995, No. 1170, § 5; 2005, No. 682, § 1; 2013, No. 1335, § 1; 2015, No. 146, § 1; 2017, No. 423, § 10; 2019, No. 910, §§ 747-751.

Amendments. The 2017 amendment added "Transfer of an inmate between departments" to the section heading; in the introductory language of (a), substituted "A" for "Unless a commitment speci-

fies that the inmate is to be judicially transferred to the Department of Community Correction, the" and added "unless"; added (a)(1) and (a)(2); inserted "or except as otherwise prohibited by subdivision (c)(4) of this section" in the introductory language of (c)(1); inserted "or administratively" in (c)(1)(A); substituted "one hundred eighty (180) days" for "two hundred

seventy (270) days” in (c)(1)(B); inserted “or administratively” in (c)(2)(A)(i); added (c)(4); and made stylistic changes.

The 2019 amendment substituted “Division of Community Correction” for “De-

partment of Community Correction” and substituted “Division of Correction” for “Department of Correction” throughout the section.

12-27-128. Division of Correction Nontax Revenue Receipts Fund.

(a) There is created in accordance with §§ 19-4-801 — 19-4-803, 19-4-804 [repealed], 19-4-805, 19-4-806, and the Revenue Classification Law, § 19-6-101 et seq., a cash fund entitled the Division of Correction Nontax Revenue Receipts Fund to consist of receipts for telephone calls from coinless telephones located on Division of Correction grounds, and from other nontax receipts not previously identified to a fund of deposit.

(b) Funds held in the Division of Correction Nontax Revenue Receipts Fund are to be administered and expended by the Director of the Division of Correction within guidelines established by the Board of Corrections for periodic transfers to other division funds or for disbursements in support of division operations or debt service.

(c) The division will request cash fund appropriations in accordance with established law and procedures after a determination by the board of the usage of the Division of Correction Nontax Revenue Receipts Fund.

History. Acts 1993, No. 697, §§ 1-3; 1997, No. 910, § 752.

Amendments. The 2019 amendment substituted “Division of Correction” for

“Department of Correction” throughout the section; and substituted “division” for “department” twice in (b) and in (c).

12-27-129. Report on rehabilitation.

(a) The Division of Correction may report to the House Committee on State Agencies and Governmental Affairs and the Senate Committee on State Agencies and Governmental Affairs no later than December 1 of each year regarding its efforts in rehabilitating the inmate population.

(b)(1) The report may include the division’s rehabilitative efforts regarding inmate education, specific job training, behavior modification, psychological treatment and assistance, and substance abuse programs.

(2) Further, the report is to include the amount of meritorious good time awarded inmates by the division for the successful completion of the various rehabilitative programs.

History. Acts 1993, No. 911, § 32; 1997, No. 324, § 1; 2019, No. 910, § 753.

Amendments. The 2019 amendment substituted “Division of Correction” for

“Department of Correction” in (a); and substituted “division” for “department” and similar language in (b).

12-27-130. Reimbursement of county.

Notwithstanding any other provision of law or Division of Correction's commitment which may exist to the contrary, the Board of Corrections shall not increase any reimbursement rate for payments made to any county for the purpose of reimbursing the expenses of the care and custody of state inmates without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

History. Acts 1993, No. 911, § 19; substituted "Division of Correction's" for 2019, No. 158, § 13; 2019, No. 910, § 754. "Department of Correction's".

Amendments. The 2019 amendment

12-27-131. Receipts for reimbursement.

(a) Receipts from cities or counties reimbursed to the Division of Correction for daily care of city or county prisoners shall be accounted for separately.

(b) The debt service of such receipts shall be used for payment of debt service on bonds, loans, or any other instruments used to finance regional jail facilities.

(c) The operational portion of such receipts shall also be used for debt service unless approval is received from the Secretary of the Department of Finance and Administration for other usages.

History. Acts 1993, No. 911, § 30; substituted "Secretary of the Department of Finance and Administration" for 2019, No. 910, §§ 755, 756. "Director of the Department of Finance and Administration" in (c).

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a); and

12-27-132. Award of pistol upon retirement or death.

When a Division of Community Correction parole or probation officer retires from service or dies while still employed with the division, in recognition of and appreciation for the service of the retiring or deceased parole or probation officer, the division may award the pistol carried by the officer at the time of his or her death or retirement from service to:

- (1) The parole or probation officer; or
- (2) The parole or probation officer's spouse if the spouse is eligible under applicable state and federal laws to possess a firearm.

Acts 2009, No. 365, § 1; 2019, No. 910, § 757.

Amendments. The 2019 amendment, in the introductory language of the section, substituted "Division of Community Correction" for "Department of Community Correction"; and "division" for "department" twice.

12-27-134. Probation services.

(a) The Division of Community Correction shall administer, in cooperation with the circuit courts, the provision of probation services as prescribed by the circuit courts.

(b) The division shall establish an acceptable procedure that ensures the selection of qualified applicants to meet the needs of the circuit courts and includes subject matter experts from the circuit courts.

History. Acts 1993, No. 953, § 14; 2019, No. 910, § 758.

Amendments. The 2019 amendment substituted "Division of Community Cor-

rection" for "Department of Community Correction" in (a); and substituted "division" for "department" in (b).

12-27-135. Facility assignment.

(a)(1) In accordance with the rules and procedures promulgated by the Board of Corrections, the Director of the Division of Correction shall assign a newly committed inmate to an appropriate facility of the Division of Correction.

(2) The director may transfer an inmate from one (1) facility to another consistent with the commitment and in accordance with treatment, training, and security needs.

(b) All commitments to the division shall be to the division and not to a particular institution.

History. Acts 1993, No. 658, § 1; 2019, No. 315, § 888.

Amendments. The 2019 amendment

substituted "rules and procedures" for "rules, procedures, and regulations" in (a)(1).

12-27-136. Services and equipment.

The Division of Correction and the Division of Community Correction may provide services, furnishings, equipment, and office space to assist the Parole Board in fulfilling the purposes for which the board was created by law.

History. Acts 1995, No. 195, § 3; 2019, No. 910, § 759.

Amendments. The 2019 amendment substituted "Division of Correction" for

"Department of Correction," and "Division of Community Correction" for "Department of Community Correction".

12-27-137. Confidentiality of emergency preparedness documents.

(a) The following sections of the Division of Correction's official Emergency Preparedness Manual are confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.:

- (1) Command Post Checklist;
- (2) Command Notifications;
- (3) Internal Notifications;

- (4) External Notifications;
- (5) Recall Notifications;
- (6) Family Notifications;
- (7) Tactical Systems;
- (8) Command Structure;
- (9) Emergency Locations;
- (10) Emergency Equipment;
- (11) Emergency Deactivation;
- (12) Emergency Plans;
- (13) Work Stoppage Directive;
- (14) Evacuation Diagrams; and
- (15) Facility Maps, Utility Locations.

(b) Any document described in subsection (a) of this section shall become available for public viewing if it becomes part of a criminal investigation, at the time that investigation is concluded and it is not otherwise exempt by law.

(c) Any amendments or additions to the sections of the manual described in subsection (a) of this section shall be reviewed annually by the Charitable, Penal and Correctional Institutions Subcommittee of the Legislative Council.

History. Acts 1997, No. 741, § 1; 2019, No. 910, § 760. substituted "Division of Correction's" for "Department of Correction's" in the introductory language of (a).

Amendments. The 2019 amendment

12-27-139. Notice to police when furloughed inmate will be in jurisdiction.

(a) The Board of Corrections may promulgate rules to allow inmates to participate in a meritorious furlough program which include a requirement that the county sheriff and the chief of police of the city or town, if applicable, shall be notified if an inmate will be present within their jurisdiction while on furlough.

(b) The rules referred to in subsection (a) of this section shall not require the county sheriff or the chief of police of the city or town, if applicable, of the jurisdiction in which an inmate will be present on furlough to approve the granting of the furlough.

(c)(1) All Arkansas-certified law enforcement officers are authorized to escort inmates on emergency furlough.

(2) The board may promulgate rules necessary to implement subdivision (c)(1) of this section.

History. Acts 2001, No. 1371, § 1; 2019, No. 315, § 889. deleted "and regulations" following "rules" in (a), (b), and (c)(2).

Amendments. The 2019 amendment

12-27-140. Division of Community Correction annual report.

(a)(1) On July 31 of each year, the Division of Community Correction shall submit an annual report to the Legislative Council showing the

number of persons sentenced or transferred to the division during the fiscal year for each criminal offense classification.

(2) Persons sentenced or transferred for multiple offenses shall be noted in the report.

(b) The report shall include a breakdown by race of all persons charged in each criminal offense classification.

(c) The division shall cooperate with and upon request make presentations and provide various reports, to the extent the division's budget will allow, to the Legislative Council concerning division policy and criteria on discretionary offender programs and services.

History. Acts 2003, No. 1031, § 4; 2005, No. 1962, § 47; 2019, No. 910, §§ 761, 762.

Amendments. The 2019 amendment substituted "Division of Community Cor-

rection" for "Department of Community Correction" in (a)(1); and substituted "division" for "department" in (a)(1) and throughout (c).

12-27-141. [Repealed.]

Publisher's Notes. This section, concerning Department of Correction annual report, was repealed by Acts 2017, No.

305, § 1. The section was derived from Acts 2003, No. 1031, § 5; 2005, No. 1962, § 48.

12-27-142. Medical services contract.

(a) The Division of Correction and the Division of Community Correction may enter into professional services contracts for medical services for a contract period not to exceed ten (10) years.

(b) Except as provided in subsection (a) of this section, the professional services contracts for medical services shall comply with all other provisions of the Arkansas Procurement Law, § 19-11-201 et seq., and rules promulgated under the Arkansas Procurement Law, § 19-11-201 et seq.

History. Acts 2005, No. 684, § 1; 2017, No. 250, § 21; 2019, No. 910, § 763.

Amendments. The 2017 amendment substituted "and rules promulgated under the Arkansas Procurement Law, § 19-11-201 et seq." for "and regulations" in (b); and deleted (c).

The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (a).

12-27-143. Award of service weapon upon retirement or death.

When a Division of Correction employee retires from service with at least twenty (20) years of service or dies while still employed with the division, in recognition of and appreciation for the service of the retiring or deceased employee, the Director of the Division of Correction may award the service weapon carried by the employee at the time of his or her retirement from service or death to:

(1) The employee;

(2) The employee's spouse if the spouse is eligible under applicable state and federal laws to possess a firearm; or

(3)(A) The surviving child of the employee if there is no surviving spouse and the surviving child is eligible under applicable state and federal laws to possess a firearm.

(B)(i) If there is more than one (1) surviving child of the employee, the service weapon may be awarded to the oldest surviving child if he or she is eligible under applicable state and federal laws to possess a firearm.

(ii) If the oldest of the surviving children is not eligible to possess a firearm under applicable state and federal laws, then the service weapon may be awarded to the next-oldest surviving child if he or she is eligible to possess a firearm under applicable state and federal laws.

History. Acts 2011, No. 181, § 1; 2019, No. 106, § 1; 2019, No. 910, § 764.

A.C.R.C. Notes. Acts 2019, No. 910, § 764, changed "department" to "division" in this section before "may award". However, Acts 2019, No. 106, § 1, specifically amended this section to change "department" to the "Director of the Department of Correction". Pursuant to Acts 2019, No. 910, § 739, the Director of the Department of Correction is now known as the

"Director of the Division of Correction".

Amendments. The 2019 amendment by No. 106 substituted "Director of the Department of Correction" for "the department" in the introductory language; and added (3).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" and "division" for "department" in the introductory language.

12-27-144. Division of Community Correction — Receipt of grant money for certain purposes.

(a) The Division of Community Correction may receive money from any source to be deposited into the Accountability Court Fund to be used for adult and juvenile specialty court programs as defined under § 16-10-139, based upon a formula to be developed by the Arkansas Judicial Council, Inc., reviewed by the Specialty Court Program Advisory Committee, and approved by the Legislative Council.

(b) The division may promulgate rules to implement this section.

History. Acts 2015, No. 895, § 8; 2019, No. 910, § 765.

Amendments. The 2019 amendment substituted "Division of Community Cor-

rection" for "Department of Community Correction" in the section heading and (a); and substituted "division" for "department" in (b).

12-27-145. Records to be posted on a public website — Definition.

(a) To the extent permitted by federal law, the Division of Correction shall post on the Division of Correction's website the following information concerning an inmate:

(1) The offense and sentence for any conviction for which the inmate is incarcerated, including:

(A) Whether the inmate is subject to a suspended sentence, if known; and

(B) The terms of the suspended sentence, if applicable;

(2)(A)(i) Beginning July 1, 2015, the disciplinary record for each inmate.

(ii) As used in this subsection, "disciplinary record" means a list of each major disciplinary violation after July 1, 2015, for which the inmate has been found guilty.

(B) Additionally, the list and the date of major disciplinary violations for which the inmate was found guilty shall be displayed during the period the inmate is being considered for transfer to parole;

(3)(A) Risk assessment scores completed after April 1, 2015.

(B) Risk assessment scores under this subdivision (a)(3) shall include the name of the state agency that completed the risk assessment, the date the risk assessment was conducted, and the level of assessment.

(C) Information by the Division of Correction regarding how risk assessments are scored shall also be posted;

(4) Custody status and level;

(5) Any known aliases;

(6) A current photograph of the inmate;

(7) A complete felony conviction summary to the extent that information is available to the Division of Correction;

(8) To the extent the information is available to the Division of Correction, if an order of protection, no contact order, or other order from an in-state or out-of-state court that prohibits contact or communication with another person is in place;

(9) Any programs completed by the inmate while in custody; and

(10) An inmate's parole eligibility date or date he or she is to be released from incarceration as well as a general explanation of how an inmate's parole eligibility date is calculated, including good time credits.

(b)(1) To the extent permitted by federal law, the Division of Community Correction shall post on the Division of Community Correction's website the following information concerning a probationer, parolee, or other person under the supervision of the Division of Community Correction who has absconded or has had a warrant issued for his or her arrest for evading supervision:

(A) Any offense and sentence for which the probationer, parolee, or other person under the supervision of the Division of Community Correction is being supervised, including:

(i) Whether the probationer, parolee, or other person under the supervision of the Division of Community Correction is subject to a suspended sentence, if known; and

(ii) The terms of the suspended sentence, if applicable;

(B) A complete felony conviction summary to the extent that information is available to the Division of Community Correction;

(C)(i) Risk assessment scores completed after April 1, 2015.

(ii) Risk assessment scores under this subdivision (b)(1)(C) shall include the name of the state agency that completed the risk assessment, the date the risk assessment was conducted, and the level of assessment.

(iii) Information by the Division of Community Correction regarding how risk assessments are scored shall also be posted;

(D) Any known aliases;

(E) A most recent photograph of the probationer, parolee, or other person under the supervision of the Division of Community Correction;

(F) To the extent the information is available to the Division of Community Correction, if an order of protection, no-contact order, or other order from an in-state or out-of-state court that prohibits contact or communication with another person is in place;

(G) All major disciplinary violations while the probationer, parolee, or other person under the supervision of the Division of Community Correction was incarcerated and the date of the major disciplinary violation disposition;

(H) Any programs completed by the probationer, parolee, or other person under the supervision of the Division of Community Correction while on supervision and the date of completion; and

(I) A list of previous revocation offenses while on probation or parole and date of revocation.

(2) The Division of Community Correction shall develop a plan to establish a method for a victim of a crime committed by a probationer, parolee, or other person under the supervision of the Division of Community Correction to directly and easily access the information listed under this subsection.

(c)(1) When possible, court-generated records listed under this section shall be electronic copies of the actual court documents.

(2) All victim information included in the court-generated records under this subsection shall be redacted.

History. Acts 2015, No. 1265, § 7; 2017, No. 250, § 22; 2019, No. 910, § 766.

Amendments. The 2017 amendment substituted “A most” for “Most” in (b)(1)(E); in (b)(1)(F), substituted “no-contact” for “no contact” preceding “order”; and, in (b)(1)(G), substituted “probationer, parolee, or other person under the super-

vision of the Department of Community Correction” for “inmate”.

The 2019 amendment substituted “Division of Correction” for “Department of Correction” throughout (a); and substituted “Division of Community Correction” for “Department of Community Correction” throughout (b).

12-27-146. Tracking an inmate or person being supervised who is serving a suspended sentence.

(a) The Division of Community Correction shall track a person under its supervision who is serving a suspended sentence and notify the prosecuting attorney with jurisdiction over the person’s suspended sentence if the division knows that the person has not complied with the terms and conditions of the suspended sentence.

(b) A circuit court shall notify the division of all suspended sentences to which the circuit court sentences a defendant, including the defendant's name, the terms and conditions of the suspended sentence, and the length of the suspended sentence.

History. Acts 2015, No. 1265, § 8; rection" for "Department of Community Correction" in (a); and substituted "division" for "department" in (a) and (b).
2019, No. 910, § 767.

Amendments. The 2019 amendment substituted "Division of Community Cor-

12-27-147. Rulemaking and administrative directive reporting requirement.

(a) A rule implemented by the Board of Corrections, Division of Correction, Division of Community Correction, or the Parole Board pertaining to this act shall be approved by the appropriate legislative committee before becoming effective.

(b) Any administrative directive or board policy pertaining to this act implemented by the Board of Corrections, the Division of Correction, the Division of Community Correction, or the Parole Board shall be reported to the Legislative Council.

History. Acts 2015, No. 1265, § 9; "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (a) and (b).
2019, No. 910, § 768.

Amendments. The 2019 amendment substituted "Division of Correction" for

12-27-148. Confidentiality of emergency preparedness document of the Division of Community Correction.

(a) The following sections of the Division of Community Correction's official Emergency Preparedness Manual are confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.:

- (1) Command Post Checklist;
- (2) Command Notifications;
- (3) Internal Notifications;
- (4) External Notifications;
- (5) Recall Notifications;
- (6) Family Notifications;
- (7) Tactical Systems;
- (8) Command Structure;
- (9) Emergency Locations;
- (10) Emergency Equipment;
- (11) Emergency Deactivation;
- (12) Emergency Plans;
- (13) Work Stoppage Directive;
- (14) Evacuation Diagrams; and
- (15) Facility Maps, Utility Locations.

(b) If a section of the manual described in subsection (a) of this section becomes part of a criminal investigation, the section is available

for public viewing at the conclusion of the criminal investigation if the section is not otherwise exempt from disclosure by law.

(c) An amendment or addition to a section of the manual described in subsection (a) of this section shall be reviewed annually by the Charitable, Penal and Correctional Institutions Subcommittee of the Legislative Council.

History. Acts 2017, No. 376, § 1; 2019, No. 910, § 769.

Amendments. The 2019 amendment substituted “Division of Community Cor-

rection” for “Department of Community Correction” in the introductory language of (a).

12-27-149. Division of Community Correction — Sufficient staffing guidelines.

For the purposes of maintaining a sufficiently trained and specialized staff of probation and parole officers, the Division of Community Correction shall establish staffing guidelines using evidence-based practices to develop ratios between the number of high-risk, medium-risk, and low-risk probationers and parolees and the probation officers and parole officers assigned to the high-risk, medium-risk, and low-risk probationers and parolees in order to maximize the effectiveness of the monitoring ability of the probation officers and parole officers.

History. Acts 2017, No. 423, § 11; 2019, No. 910, § 770.

Amendments. The 2019 amendment substituted “Division of Community Cor-

rection” for “Department of Community Correction” in the section heading and the section.

SUBCHAPTER 2 — PAY-FOR-SUCCESS ACT

| | |
|---------------------------------------------|--------------------------------------|
| SECTION. | SECTION. |
| 12-27-202. Legislative findings and intent. | 12-27-203. Definitions. |
| | 12-27-204. Pay-for-success programs. |

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-27-202. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Incarceration and reincarceration are costly for the government and for taxpayers;

(2) Certain intervention measures have been found to reduce reincarceration rates;

(3) Pay-for-success contracts can serve as an effective tool for addressing certain issues concerning Arkansas correctional facilities, including overcrowding, by enabling the state to finance programs aimed at reducing recidivism rates; and

(4) It is in the best interests of Arkansas residents to encourage and enable the Division of Community Correction to obtain financing for certain intervention services to reduce the recidivism rate in Arkansas correctional facilities.

(b) The General Assembly intends for this subchapter to enable the division to obtain private financing for intervention services on a pay-for-success basis to reduce the reincarceration rate in Arkansas correctional facilities.

History. Acts 2015, No. 895, § 9; 2019, No. 910, §§ 771, 772.

Amendments. The 2019 amendment substituted "Division of Community Cor-

rection" for "Department of Community Correction" in (a)(4); and substituted "division" for "department" in (b).

12-27-203. Definitions.

As used in this subchapter:

(1) "Incarcerated" means the condition of being committed to a state correctional facility; and

(2) "Pay-for-success program" means a program in which the Division of Community Correction pays for intervention services only if certain performance targets are met, including without limitation a reduction in the reincarceration rate in Arkansas correctional facilities through intervention measures that focus on improving personal responsibility and decision making.

History. Acts 2015, No. 895, § 9; 2019, No. 910, § 773.

Amendments. The 2019 amendment

substituted "Division of Community Correction" for "Department of Community Correction" in (2).

12-27-204. Pay-for-success programs.

(a) The Division of Community Correction may enter into an agreement with entities, including without limitation licensed or accredited, as applicable, community-based providers specializing in behavioral health, case management, and job placement services, and two-year or four-year public universities to create a pay-for-success program for incarcerated individuals or individuals on parole or probation that requires the division to pay for the intervention services only if the performance targets stated in the agreement are achieved.

(b) Before entering into an agreement under subsection (a) of this section, the division shall:

(1) Calculate the amount and timing of the payments that would be earned by the entity providing the intervention services during each year of the agreement if the performance targets are achieved; and

(2) Make a written determination that the agreement will result in specific performance improvements and budgetary savings if the performance targets are achieved.

(c) An agreement entered into under subsection (a) of this section:

(1) Shall include the following:

(A) A requirement that payment be conditioned on the achievement of specific outcomes based on defined performance targets; and

(B) An agreement with an independent third party to evaluate the pay-for-success program to determine whether the performance targets have been achieved;

(2) May contain a graduated payment schedule to allow for varying payments based on different levels of performance targets; and

(3) May include without limitation an agreement with one (1) or more private entities regarding the following:

(A) One (1) or more loans to fund the pay-for-success program’s delivery and operations;

(B) One (1) or more guarantees for loans obtained under this section;

(C) Payment based on reduced rates of reincarceration or other agreed-upon measures of success; and

(D) Oversight and implementation of the pay-for-success program, including without limitation the following:

(i) Making necessary financial arrangements;

(ii) Training staff;

(iii) Selecting service providers;

(iv) Overseeing the intervention measures;

(v) Monitoring pay-for-success program participation; and

(vi) Designation of one (1) entity to serve as a liaison among all parties to the agreement.

History. Acts 2015, No. 895, § 9; 2019, No. 910, § 774.

Amendments. The 2019 amendment, in (a), substituted “Division of Community Correction” for “Department of Commu-

nity Correction” and “division” for “department”; and substituted “division” for “department” in the introductory language of (b).

CHAPTER 28

STATE CORRECTIONAL FACILITIES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 6. PRISON OVERCROWDING EMERGENCY POWERS ACT.
- 7. ARKANSAS BOOT CAMP ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-28-101. Facilities.
 12-28-104. Paroling authority.
 12-28-105. Continuity of care for persons released.

SECTION.

- 12-28-106. Electric fencing.
 12-28-107. Training for inmates.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-28-101. Facilities.

(a)(1) The Division of Correction, with the approval of the Board of Corrections, shall provide appropriate incarceration facilities for women, youthful offenders, and other adult offenders committed to the division by the courts of this state.

(2) The division shall also provide education and other rehabilitation and treatment programs designed to prepare inmates committed to the division for productive and law-abiding lives upon release from the division.

(3) The division may contract with state or private entities such as accredited colleges or universities to provide additional educational opportunities for inmates under the direction and authority of the board and the Corrections School System.

(b) Any facility built or occupied by the division for use as a correctional facility shall be given a designated name of "unit" or "center" depending on its size, location, and purpose of usage.

History. Acts 1977, No. 466, § 4; A.S.A. 1947, § 46-100.1; Acts 2001, No. 613, § 1; 2009, No. 788, § 2; 2019, No. 910, § 775.

Amendments. The 2019 amendment, in (a)(1), substituted "Division of Correc-

tion" for "Department of Correction" and "division" for "department", and substituted "division" for "department" throughout (a)(2), (a)(3), and (b).

12-28-104. Paroling authority.

(a) The Parole Board shall be the paroling authority for the units of the Department of Corrections and shall make recommendations to the

Governor in cases from the criminal courts that, in the board's opinion, the defendant in the case should be pardoned.

(b) The board shall consider the work skills, education, rehabilitation, and treatment programs recommended to the inmate upon intake and determine whether the inmate took advantage of those opportunities while incarcerated in the department in making decisions regarding parole.

History. Acts 1969, No. 377, § 9; 1981, No. 107, § 2; A.S.A. 1947, § 46-916; Acts 2009, No. 788, § 3; 2019, No. 910, § 776.

Amendments. The 2019 amendment substituted "Department of Corrections" for "Department of Correction" in (a).

12-28-105. Continuity of care for persons released.

(a)(1) Any person incarcerated by the Division of Correction may be permitted to remain within a treatment facility operated by the division, if serious physical or mental disorders or disabilities exist, until release to a similar treatment setting outside of the division can be accomplished.

(2) In no case should the continuation of housing extend beyond a seventy-two-hour period.

(b) The division will adopt rules to govern the housing situations.

History. Acts 1993, No. 1281, §§ 1-3; 2019, No. 910, § 777.

Amendments. The 2019 amendment, in (a)(1), substituted "Division of Correc-

tion" for "Department of Correction" and "division" for "department" twice; and substituted "division" for "department" in (b).

12-28-106. Electric fencing.

(a)(1) The Division of Correction may design and install high-voltage electrified security fence systems at all existing and proposed medium and maximum security prisons.

(2) However, at the time of installation there shall be posted universal danger signs on all sides of the system clearly visible to inmates and the public displaying in English and Spanish the warning "deadly voltage".

(b) The installation of these fence systems shall be double, twelve-foot-high, security perimeter fences, with the exception of those locations where a building or wall constitutes a part of the security perimeter.

(c) At institutions where these fences have been installed, the division shall provide perimeter patrol for the safety of the local community.

History. Acts 1997, No. 350, § 1; 2019, No. 910, § 778.

Amendments. The 2019 amendment substituted "Division of Correction" for

"Department of Correction" in (a)(1); and substituted "division" for "department" in (c).

12-28-107. Training for inmates.

(a) As provided for in § 12-28-101, the Division of Correction shall provide education as well as training for inmates who want to acquire skills for employment upon release.

(b)(1) The division shall identify high-demand vocations and careers and shall accordingly create training and skills programs to prepare inmates for gainful employment upon release.

(2) The programs under this section shall be available to all inmates except for inmates who disqualify themselves from participation due to disciplinary violations or because of other circumstances that may preclude the inmates' access to these programs.

(3) Programs under this section shall include without limitation training in the following fields:

- (A) Professional careers and vocations;
- (B) Service careers and vocations;
- (C) Information and computer technology;
- (D) Medical technology; and
- (E) Office administration.

History. Acts 2011, No. 1151, § 3; 2019, No. 910, §§ 779, 780.

Amendments. The 2019 amendment substituted "Division of Correction" for

"Department of Correction" in (a); and substituted "division" for "department" in (b)(1).

SUBCHAPTER 6 — PRISON OVERCROWDING EMERGENCY POWERS ACT**SECTION.**

12-28-602. Definitions.

12-28-603. Declaration of emergency.

SECTION.

12-28-604. List of inmates — Early parole or discharge.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-28-602. Definitions.

As used in this subchapter:

- (1) "Board" means the Board of Corrections;

(2) “County backlog” means those inmates sentenced to the Division of Correction who are being housed in the county jails until space is available in a prison;

(3) “Prison” means a correctional facility operated by the division under the supervision and direction of the board;

(4) “Prison system” means the prison facilities of the division; and

(5) “Rated capacity” means the actual available bed space in the prison system as certified by the board, subject to applicable federal and state laws and the rules and regulations adopted pursuant to those laws.

History. Acts 1987, No. 418, § 2; 1995, No. 204, § 1; 1995, No. 293, § 1; 2003, No. 1721, § 1; 2019, No. 910, § 781.

substituted “Division of Correction” for “Department of Correction” in (2); and substituted “division” for “department” in (3) and (4).

Amendments. The 2019 amendment

12-28-603. Declaration of emergency.

(a)(1) Whenever the population of the prison system exceeds ninety-eight percent (98%) of the rated capacity for thirty (30) consecutive days, or whenever the number of inmates on the county jail backlog exceeds five hundred (500) inmates, the Board of Corrections may declare a prison overcrowding state of emergency.

(2) In making any emergency request based on exceeding the ninety-eight-percent capacity, the board shall certify the rated capacity and current population of the prison system and shall further certify that all authorized actions consistent with applicable state laws and rules have been exhausted in an attempt to reduce the prison population to ninety-eight percent (98%) of the rated capacity.

(3) In making any emergency request based on a county jail backlog exceeding five hundred (500) inmates, the board shall certify the list of persons on the county jail backlog and shall further certify that all authorized actions consistent with applicable state laws and rules have been exhausted in an attempt to reduce the county jail backlog to five hundred (500) inmates.

(b) Provided all other requirements of this subchapter are met, the board is authorized to invoke this subchapter separately for those facilities housing either male or female inmate populations.

History. Acts 1987, No. 418, § 3; 1991, No. 684, § 1; 1995, No. 204, § 2; 1995, No. 293, § 2; 2003, No. 1721, § 2; 2019, No. 315, § 890.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(2) and (a)(3).

12-28-604. List of inmates — Early parole or discharge.

(a)(1) When the Board of Corrections declares a prison overcrowding state of emergency due to exceeding ninety-eight percent (98%) of the rated capacity and notifies the Director of the Division of Correction of the emergency as authorized, the director shall certify to the board a list of those inmates who are Class I and Class II, and the director shall

indicate which inmates he or she recommends for parole, transfer, or discharge.

(2) The listed inmates shall be those who, if authorized, would have their parole eligibility, transfer eligibility, or minimum release dates moved up to a point where they would immediately be eligible for parole, transfer, or discharge.

(3) Upon receipt of the list of inmates certified by the director, the board is authorized to move up the projected parole eligibility, transfer eligibility, or minimum release dates of any or all inmates on the list by up to ninety (90) days.

(4) The board shall certify to the director a list of the names of all prisoners whose projected parole eligibility, transfer eligibility, or minimum release dates are affected pursuant to the provisions of this subchapter.

(b)(1) When the board declares a prison overcrowding state of emergency due to the county jail backlog exceeding five hundred (500) inmates and notifies the director of the emergency as authorized, the director shall certify to the board a list of those inmates who are in Class I or Class II status who have been incarcerated in a division facility for a minimum of six (6) months and are serving a sentence for a nonviolent offense as established by the board, and the director shall indicate which inmates he or she recommends for parole, transfer, or discharge.

(2) The listed inmates shall be those who, if authorized, would have their parole eligibility, transfer eligibility, or discharge dates moved up to a point where they would immediately be eligible for parole, transfer, or discharge.

(3) Upon the receipt of the list of inmates certified by the director, the board is authorized to move up the projected parole eligibility, transfer eligibility, or discharge dates of any or all inmates on the list by up to one (1) year.

(4) The board shall certify to the director a list of the names of all prisoners whose projected parole eligibility, transfer eligibility, or discharge dates are affected pursuant to the provisions of this subchapter.

History. Acts 1987, No. 418, § 4; 1995, No. 204, § 3; 1995, No. 293, § 3; 2003, No. 1721, § 3; 2019, No. 910, §§ 782, 783.

Amendments. The 2019 amendment

substituted "Division of Correction" for "Department of Correction" in (a)(1); and substituted "division" for "department" in (b)(1).

SUBCHAPTER 7 — ARKANSAS BOOT CAMP ACT

SECTION.

12-28-702. Legislative findings and determinations.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-28-702. Legislative findings and determinations.

The General Assembly finds that:

- (1) The cost of incarcerating the expanding number of offenders in conventional penitentiaries is skyrocketing, bringing added fiscal pressures on the state;
- (2) Some inmates may be effectively punished in a more affordable manner through the exposure to severe, military-like conditions; and
- (3) The Division of Correction should be given the authority to establish boot camps which will provide a more affordable means of punishing certain inmates who are designated as eligible for this alternative punishment by the division.

History. Acts 1989, No. 492, § 2; 2019, No. 910, § 784. **Amendments.** The 2019 amendment, in (3), substituted “Division of Correction” for “Department of Correction” and “division” for “department”.

CHAPTER 29

INMATES OF STATE FACILITIES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. GOOD TIME ALLOWANCE.
- 3. EDUCATION.
- 4. MEDICAL CARE.
- 5. STATE PRISON INMATE CARE AND CUSTODY REIMBURSEMENT ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-29-101. Custody classifications and treatment programs.
- 12-29-102. Inmates denied participation in furlough programs.
- 12-29-103. Discipline.
- 12-29-104. Contacts with persons outside the institution.
- 12-29-106. Mail to or from inmates.

SECTION.

- 12-29-107. Inmate welfare funds.
- 12-29-108. Cash in possession of inmate — Confiscation.
- 12-29-110. Selling or trading position, working condition, or promotion — Penalty.
- 12-29-111. Transport of inmate required for legal proceeding.

SECTION.

- 12-29-112. Discharge or release.
12-29-114. Notice of escape to victim or victim's next of kin.
12-29-115. Combination to escape — Authority of guards.
12-29-117. Educational, training, and rehabilitative programs.

SECTION.

- 12-29-118. Punitive isolation or solitary confinement of inmates who are minors — Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-29-101. Custody classifications and treatment programs.

(a)(1) The Director of the Division of Correction shall formulate and establish a system by which all prisoners delivered to and in the care and custody of the Division of Correction shall be classified according to deportment.

(2) In this classification, consideration shall be given to the prisoner's demeanor while in the division's care and custody and the prisoner's record prior to commitment to the division.

(b) Persons committed to the institutional care of the division shall be dealt with humanely with efforts directed to their rehabilitation.

(c)(1) For these purposes, the division may establish programs of classification and diagnosis, education, casework, counseling and psychiatric therapy, vocational training and guidance, work, library and religious services, and other rehabilitation programs or services as may be indicated.

(2) The division shall also institute procedures for the study and classification of inmates.

(d)(1) With the approval of the Board of Corrections, the director shall establish rules for the assignment of inmates to the various programs, services, and work activities of the division.

(2) Inmates in the institutions of the division may participate in and benefit from the vocational, educational, and rehabilitation services of their respective institutions solely within the rules of the division as determined by the director, subject to appeal and review by the Board of Corrections or a designated review board in accordance with procedures that shall be established by the Board of Corrections.

History. Acts 1943, No. 157, § 1; 1968 (1st Ex. Sess.), No. 50, § 8; 1981, No. 58, § 1; 1981, No. 59, § 1; A.S.A. 1947, §§ 46-116, 46-136; Acts 2019, No. 315, § 891.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (d)(1) and (d)(2).

12-29-102. Inmates denied participation in furlough programs.

A person who is convicted of any of the following offenses shall be ineligible to participate in any meritorious furlough program conducted by or for the Division of Correction:

- (1) Capital murder, § 5-10-101;
- (2) Murder in the first degree, § 5-10-102;
- (3) Kidnapping, § 5-11-102;
- (4) Rape, § 5-14-103;
- (5) Any other offense concerning sexual offenses under § 5-14-101 et seq.;
- (6) An offense concerning sexual exploitation of children under the Arkansas Protection of Children Against Exploitation Act of 1979, § 5-27-301 et seq.;
- (7) An offense concerning use of children in sexual performances under § 5-27-401 et seq.; or
- (8) Stalking, § 5-71-229.

History. Acts 1997, No. 1191, § 1; 1999, No. 1487, § 1; 2019, No. 910, § 785.

substituted “Division of Correction” for “Department of Correction” in the introductory language of the section.

Amendments. The 2019 amendment

12-29-103. Discipline.

(a) The Director of the Division of Correction or the Director of the Division of Community Correction shall prescribe, with the approval of the Board of Corrections, rules for the maintenance of good order and discipline in the facilities and institutions of the Division of Correction and the Division of Community Correction, respectively, including proceedings for dealing with violations.

(b)(1) These rules shall require that inmates found guilty of damaging or destroying state property shall be ordered to pay restitution.

(2) This restitution shall be collected by levying against the inmate’s institutional account. The levy against the inmate’s institutional account shall continue until the estimated damage to state property has been fully paid or until the inmate is released from incarceration, whichever occurs first.

(c)(1) In case of riot or other violent conduct or behavior on the part of any inmate or group of inmates, the Director of the Division of Correction may take such steps as are necessary, including the use of force and arms as necessary, to restore discipline and order.

(2) The Director of the Division of Correction may seek the assistance of the Division of Arkansas State Police, the National Guard, and local and federal law enforcement agencies in preserving order whenever the circumstances justify.

(d) The Director of the Division of Correction shall provide for a record of charges of infractions by inmates, including any punishment imposed, and shall also keep a record of all medical inspections made.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 10; 1983, No. 790, § 1; A.S.A. 1947, § 46-118; Acts 2009, No. 366, § 1; 2019, No. 315, § 892.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (a).

12-29-104. Contacts with persons outside the institution.

Under rules prescribed by the Division of Correction, heads of the institutions of the division may authorize:

(1) Visits and correspondence, under reasonable conditions, between inmates and approved friends, relatives, and others;

(2) Temporary release of an inmate for such occasions as the serious illness or death of a member of the inmate’s family; or

(3) An interview of the inmate by a prospective employer.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 13; A.S.A. 1947, § 46-119; Acts 2019, No. 910, § 786.

in the introductory language, substituted “Division of Correction” for “Department of Correction” and “division” for “department”.

Amendments. The 2019 amendment,

12-29-106. Mail to or from inmates.

(a)(1) A person without the consent of the Director of the Division of Correction shall not bring into or carry out of a prison any letter or writing to or from any inmate.

(2) A violation of this section is an unclassified misdemeanor punishable by a fine not exceeding one hundred dollars (\$100), imprisonment not exceeding thirty (30) days, or both.

(b) However, all inmates shall have the privilege, under the proper supervision and inspection of the director or his or her employees, to write and receive letters from their relations and friends.

History. Acts 1893, No. 76, § 53, p. 121; C. & M. Dig., § 9714; Pope’s Dig., § 12745; A.S.A. 1947, § 46-168; Acts 2013, No. 295, § 2; 2017, No. 250, § 23; 2019, No. 910, § 787.

Amendments. The 2017 amendment, in (a)(2), substituted “A violation of this section is an unclassified” for “Whoever shall violate the provisions of this section shall be guilty of a” preceding “misde-

meanor”, substituted “punishable by a fine” for “and shall on conviction be fined”, inserted a comma following “(\$100)”, substituted “imprisonment” for “or imprisoned in the county jail”, and deleted “fined and imprisoned” at the end.

The 2019 amendment substituted “Division of Correction” for “Department of Correction” in (a)(1).

12-29-107. Inmate welfare funds.

Amounts held as inmate welfare funds or received as inmate welfare funds through contributions, profit from sale of products to inmates, or otherwise, shall be held as a special fund to be administered and used

by the Director of the Division of Correction for the general benefit of the inmates under rules to be established by the Board of Corrections.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 39; A.S.A. 1947, § 46-122; Acts 2019, No. 315, § 893.

Amendments. The 2019 amendment deleted “and regulations” following “rules”.

12-29-108. Cash in possession of inmate — Confiscation.

(a) The Board of Corrections is authorized to promulgate rules concerning the maximum amount of cash that inmates of the Division of Correction may have in their possession.

(b) The board shall provide adequate facilities for the deposit and safekeeping of cash belonging to inmates at the division if the inmate desires to deposit it for safekeeping.

(c)(1) An inmate of the division shall forfeit any cash found on his or her person or in his or her possession in excess of the amount prescribed by rules of the board.

(2) After a hearing, the Director of the Division of Correction shall confiscate such cash and deposit the amount held in violation of the rules into a division welfare fund, to be used for the benefit of inmates of the division pursuant to rules of the board.

(3) A complete record of all funds forfeited and confiscated shall be maintained by the director.

History. Acts 1967, No. 474, § 1; A.S.A. 1947, § 46-178; Acts 2019, No. 315, §§ 894, 895.

deleted “and regulations” following “rules” in (a); deleted “or regulations” following “rules” in (c)(1); and deleted “and regulations” following “rules” twice in (c)(2).

Amendments. The 2019 amendment

12-29-110. Selling or trading position, working condition, or promotion — Penalty.

(a) It is unlawful for any inmate or employee of the Division of Correction or any other person to sell, barter, or trade, or to promise or offer to sell, barter, or trade any favored job or position, working condition, or any promotion or demotion in any job or position at the division and to:

(1) Accept or receive any money, consideration, or thing of value therefor;

(2) Make or accept any loan or money as inducement thereof; or

(3) Accept or receive any favored condition or job or position at the division either directly or indirectly as a result thereof.

(b)(1) A violation of this section is an unclassified felony punishable by imprisonment for not less than one (1) year nor more than five (5) years.

(2) If the person convicted under this section is an inmate in the division, the sentence shall commence to run from the expiration of the sentence under which the person is serving at the time of the violation of this section.

History. Acts 1967, No. 475, §§ 1, 2; A.S.A. 1947, §§ 46-179, 46-180; Acts 2017, No. 250, § 24; 2019, No. 910, § 788.

Amendments. The 2017 amendment substituted “It is” for “It shall be” in the introductory language of (a); in (b)(1), substituted “A violation of this section is an unclassified” for “Any person violating the provisions of this section shall be guilty of a” preceding “felony” and “punishable by imprisonment” for “and upon conviction

shall be punished by imprisonment in the department”; and, in (b)(2), substituted “convicted under this section” for “so convicted” and added “of this section”.

The 2019 amendment, in the introductory language of (a), substituted “Division of Correction” for “Department of Correction” and “division” for “department”; and substituted “division” for “department” in (a)(3) and (b)(2).

12-29-111. Transport of inmate required for legal proceeding.

(a) If an inmate in the care and custody of the Division of Correction or the Division of Community Correction is required to be present during a criminal proceeding or a civil proceeding that arises from a criminal charge or conviction of any court in this state, the county sheriff of the county in which the criminal proceeding or civil proceeding takes place shall take custody of the inmate at the institution where the inmate is confined, transport the inmate to the appropriate county, and make him or her available to the court.

(b) At the conclusion of the criminal proceeding or civil proceeding, the county sheriff shall transport the inmate back to the unit of the Division of Correction or Division of Community Correction from which the inmate was received and shall return custody of the inmate to the Division of Correction or Division of Community Correction officials.

(c)(1) The county sheriff's office is responsible for the custody, sustenance, and safety of the inmate from the time the inmate is placed into its custody until the time custody of the inmate is returned to the Division of Correction or the Division of Community Correction.

(2) The county in which the legal proceeding is held is responsible for all expenses relating to the transportation and care of the inmate.

(d) While transporting an inmate under this section, a county sheriff has the full authority of his or her office in any county of this state in matters relating to the transportation.

(e) This section does not apply to the transportation and care costs for court appearances arising from charges brought by the Division of Correction against the inmate for offenses committed while the inmate is under the custody and care of the Division of Correction.

(f)(1) When an inmate in the care and custody of the Division of Correction or the Division of Community Correction is required to be present for appearances in a civil proceeding that does not arise from a criminal charge or conviction, the court requiring the inmate's presence may assess costs against one (1) or more of the parties to the proceeding to be paid to the Division of Correction or the Division of Community Correction to compensate the actual cost of transporting the inmate and to compensate other costs assessed by the court.

(2) Costs under this subsection shall not be assessed against the Department of Human Services if the Department of Human Services is a party to the proceeding.

History. Acts 1975, No. 737, § 1; A.S.A. 1947, § 46-181; Acts 2009, No. 364, § 1; 2013, No. 287, § 1; 2019, No. 910, § 789.

Amendments. The 2019 amendment substituted "Division of Correction" for

"Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout the section.

12-29-112. Discharge or release.

(a) At least one hundred twenty (120) days before an inmate's anticipated release date, the Division of Correction, in collaboration with the inmate and the Division of Community Correction and the Parole Board, shall complete a prerelease assessment and reentry plan, which may include a travel subsidy and transportation to the closest commercial transportation pick-up point.

(b) A copy of the reentry plan under this section shall be provided to the inmate and the assigned parole officer, if applicable.

(c) An inmate released upon completion of his or her terms of incarceration shall be provided:

(1) Written and certified proof that he or she completed and satisfied all the terms of his or her incarceration; and

(2) Information on how to reinstate his or her voting rights upon discharge of his or her sentence.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 15; 1969, No. 377, § 7; 1981, No. 58, § 3; 1981, No. 107, § 1; A.S.A. 1947, §§ 46-121, 46-914; Acts 2007, No. 271, § 1; 2009, No. 788, § 4; 2013, No. 440, § 1; 2015, No. 895, § 10; 2019, No. 910, § 790.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (a).

12-29-114. Notice of escape to victim or victim's next of kin.

(a)(1) Whenever an inmate serving a sentence for the commission of a crime escapes from the custody of the Division of Correction, it shall be the responsibility of the division to immediately notify the victim of the crime or the victim's next of kin of the inmate's escape.

(2) However, the victim of the crime or the victim's next of kin will not be notified by the division unless a request for the notification has previously been delivered in writing to the division.

(b)(1) When notice of an escape is given by the division, it shall be conveyed by telephone whenever possible and otherwise in writing to the last known address of the victim or the victim's next of kin.

(2) It shall be the responsibility of the victim or the victim's next of kin to notify the division in writing of any future changes in the victim's or victim's next of kin address and telephone number.

(c) It shall be the responsibility of the prosecuting attorney of the county from which the inmate was committed to notify the victim or the victim's next of kin that an address and telephone number may be provided to the division, and the procedure by which to supply information, for the purpose of notification should the inmate escape.

History. Acts 1985, No. 428, §§ 1-3; 1985, No. 470, §§ 1-3; A.S.A. 1947, §§ 46-161.1 — 46-161.3; Acts 2019, No. 910, § 791. substituted “division” for “department” throughout the section; and substituted “Division of Correction” for “Department of Correction” in (a)(1).

Amendments. The 2019 amendment

12-29-115. Combination to escape — Authority of guards.

(a) The officers and guards of the Division of Correction shall use all lawful and suitable means to defend themselves, secure the persons of offenders, and prevent attempted violence and escape whenever two (2) or more inmates shall combine for the following purposes or whenever one (1) or more inmates shall:

- (1) Offer violence to any officer, guard, or inmate;
- (2) Do or attempt to do any injury to any building, workshop, or appurtenance thereto;
- (3) Attempt to escape; or
- (4) Resist any lawful demand.

(b) If any of the officers or guards employed in the division shall, in the attempt to prevent the escape of any inmate, any attempt to retake any inmate who may have escaped, or in the attempt to suppress any riot, revolt, or insurrection, take the life of any inmate, the officer or guard shall not be held responsible therefor unless it is done unnecessarily or wantonly.

History. Acts 1893, No. 76, § 49, p. 121; C. & M. Dig., § 9691; Pope’s Dig., § 12723; A.S.A. 1947, § 46-163; 2013, No. 295, § 3; 2019, No. 910, § 792. substituted “Division of Correction” for “Department of Correction” in the introductory language of (a); and substituted “division” for “department” in (b).

Amendments. The 2019 amendment

12-29-117. Educational, training, and rehabilitative programs.

An inmate who was convicted and sentenced as an adult for an offense he or she committed before he or she attained eighteen (18) years of age shall not be prevented from participating in an educational, training, or rehabilitative program that is otherwise available to other inmates in the general population of the correctional facility in which he or she is housed.

History. Acts 2019, No. 821, § 1.

12-29-118. Punitive isolation or solitary confinement of inmates who are minors — Definitions.

- (a) As used in this section:
- (1) “Minor” means a person who is under eighteen (18) years of age;
 - (2) “Punitive isolation” means the placement of a minor in a location that is separate from the general population as a punishment; and
 - (3) “Solitary confinement” means the isolation of a minor in a cell separate from the general population as a punishment.

(b) A minor who is an inmate at a state correctional facility shall not be placed in punitive isolation or solitary confinement as a disciplinary measure for more than twenty-four (24) hours unless the:

(1) Placement of the minor in punitive isolation or solitary confinement is due to:

(A) A physical or sexual assault committed by the minor while in the state correctional facility;

(B) Conduct of the minor that poses a direct threat to the safety of a person or a clear threat to the safe and secure operation of the state correctional facility; or

(C) The minor escaping or attempting to escape from the state correctional facility; and

(2)(A) Warden of the state correctional facility or his or her designee provides written authorization to place the minor in punitive isolation or solitary confinement for more than twenty-four (24) hours.

(B) The warden of the state correctional facility or his or her designee shall provide the written authorization described in subdivision (b)(2)(A) of this section for every twenty-four-hour period during which the minor remains in solitary confinement after the initial twenty-four (24) hours.

(c) The Board of Corrections shall retain the authority to govern and supervise the administration of the responsibilities of the board before July 24, 2019, including without limitation the administration of the state penal institutions under Arkansas Constitution, Amendment 33.

History. Acts 2019, No. 971, § 2.

SUBCHAPTER 2 — GOOD TIME ALLOWANCE

| | |
|----------------------------------------|-------------------------------------|
| SECTION. | SECTION. |
| 12-29-201. Meritorious good time. | 12-29-205. Good time earned pending |
| 12-29-202. Classification committee — | transfer to Division of Cor- |
| Classifications. | rection or Division of Com- |
| 12-29-203. Forfeiture — Restoration. | munity Correction. |
| 12-29-204. Statutory good time — Maxi- | |
| mum reduction. | |

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-29-201. Meritorious good time.

(a) An inmate may be entitled to meritorious good time reducing his or her transfer eligibility date up to thirty (30) days for each month incarcerated after imposition of sentence in one (1) of the units, facilities, and centers maintained by the Division of Correction or the Division of Community Correction.

(b) An inmate transferred or paroled to the supervision of the Division of Community Correction under § 16-93-615 may receive meritorious good time reducing his or her time of transfer or parole supervision up to thirty (30) days for each month he or she is under the supervision of the Division of Community Correction.

(c) Meritorious good time shall be allocated under rules promulgated by the Board of Corrections and administered by the respective Division of Correction or Division of Community Correction staff subject to the provisions of this subchapter for good discipline, behavior, work practices, job responsibilities, and involvement in rehabilitative activities while in the custody or under the supervision of the Division of Correction or the Division of Community Correction.

(d) Meritorious good time will not be applied to reduce the length of a sentence.

(e)(1) Meritorious good time shall apply to an inmate's transfer eligibility date from the Division of Correction or a community correction facility.

(2) Meritorious good time shall under no circumstances reduce an inmate's time served in prison by more than one-half ($\frac{1}{2}$) of the percentage required by law for transfer eligibility.

(3) Meritorious good time shall under no circumstances reduce an inmate's confinement in a community correction facility by more than one-half ($\frac{1}{2}$).

(f)(1) The Division of Correction or the Division of Community Correction shall determine a date on which the inmate who has acquired the maximum amount of meritorious good time necessary is to be administratively transferred to a less restrictive placement or supervision level within the Division of Community Correction.

(2) This date will be determined in accordance with the policies developed by the Arkansas Sentencing Commission within the parameters allowed by law.

(g)(1) Inmates under sentence of death or life imprisonment without parole shall not be eligible for meritorious good time under this subchapter but may be pardoned or have their sentences commuted by the Governor, as provided by law.

(2) Inmates sentenced to life imprisonment shall not receive meritorious good time calculated on their sentences unless the sentence is commuted to a term of years by executive clemency.

(3) Upon commutation, the inmate shall be eligible to receive meritorious good time at the rate established by this subchapter.

History. Acts 1993, No. 536, §§ 1, 2; 1993, No. 558, §§ 1, 2; 2003, No. 1005, § 1; 2011, No. 570, § 73; 2019, No. 315, § 896; 2019, No. 910, § 793.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (c).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction” throughout the section.

12-29-202. Classification committee — Classifications.

(a)(1) There is established a classification committee to be defined by administrative rules approved by the Board of Corrections.

(2) Members of the committee shall be selected by wardens or supervisors of the various units, facilities, or centers of the Division of Correction and Division of Community Correction per board rule governing their selection.

(3) This committee shall meet as often as necessary to classify the inmates into no more than four (4) classes according to good behavior, good discipline, medical condition, job responsibilities, and involvement in rehabilitative activities.

(b)(1) An inmate who maintains class through good behavior, good discipline, work practices, job responsibilities, and involvement in rehabilitative activities may earn up to one (1) day for every day served as a reduction toward his or her transfer eligibility date for each day incarcerated after the imposition of sentence.

(2) An inmate who is reduced to the lowest class, established through board policy, as a result of disciplinary action shall not be entitled to earn meritorious good time.

(3) An inmate serving a punitive disciplinary sentence in punitive segregation shall not be entitled to earn meritorious good time.

(c) An inmate may be reclassified as often as the committee deems necessary or in accordance with current board rules to carry out the purpose of this subchapter and to maintain good discipline, order, and efficiency at the units, facilities, or centers.

(d)(1) Upon recommendation of the committee, the Director of the Division of Correction may award an amount of meritorious good time sufficient to reduce incarceration time by up to ninety (90) days, not to exceed a total of three hundred sixty (360) days, for each successful completion of a:

(A) State-sponsored general education development certificate program;

(B) Vocational program for which certification is awarded;

(C) Drug or alcohol treatment program offered at a Division of Correction facility; or

(D) Pre-release and other rehabilitative programs or assignments as approved by the Board of Corrections.

(2)(A) The additional days of meritorious good time described in subdivision (d)(1) of this section shall be awarded pursuant to rules promulgated by the board.

(B) The board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) Meritorious good time awarded under subdivision (d)(1) of this section shall not be applicable to persons sentenced under § 16-93-618(a)(1)(A)-(E).

(f) A jury may be instructed pursuant to § 16-97-103 regarding the awarding of meritorious good time under subdivision (d)(1) of this section.

History. Acts 1993, No. 536, § 3; 1993, No. 558, § 3; 1997, No. 876, § 1; 2005, No. 681, § 1; 2007, No. 1413, § 1; 2011, No. 570, § 74; 2011, No. 748, § 1; 2019, No. 315, §§ 897, 898.

Amendments. The 2019 amendment substituted “rules” for “regulations” and made a similar change in (a)(1) and (a)(2); and substituted “rules” for “regulations” in (c).

12-29-203. Forfeiture — Restoration.

(a) All meritorious good time shall be forfeited by an inmate in the event of escape, and all or part of accrued meritorious good time may be taken away by the Director of the Division of Correction or the Director of the Division of Community Correction, respectively, for infraction of rules.

(b) However, in the event of escape, the Director of the Division of Correction or the Director of the Division of Community Correction, respectively, may restore all or part of any accrued meritorious good time if the escapee returns to the institution voluntarily, without expense to the state, and without any act of violence while a fugitive from the institution.

(c) The Director of the Division of Correction or the Director of the Division of Community Correction, respectively, may restore lost meritorious good time according to rules promulgated by the Board of Corrections.

History. Acts 1971, No. 510, § 4; A.S.A. 1947, § 46-120.2; Acts 1993, No. 536, § 4; 1993, No. 558, § 4; 2019, No. 135, § 1.

inserted “or the Director of the Department of Community Correction, respectively” in (a) and (b), and made stylistic changes.

Amendments. The 2019 amendment

12-29-204. Statutory good time — Maximum reduction.

No inmate sentenced to the Division of Correction shall ever receive a reduction under this subchapter, or this subchapter and another subchapter jointly, of more than thirty (30) days for each month served except for the additional days of meritorious good time awards authorized in § 12-29-202(d).

History. Acts 1971, No. 510, § 6; A.S.A. 1947, § 46-120.5; Acts 2005, No. 681, § 2; 2005, No. 1962, § 49; 2019, No. 910, § 794.

Amendments. The 2019 amendment substituted “Division of Correction” for “Department of Correction”.

12-29-205. Good time earned pending transfer to Division of Correction or Division of Community Correction.

(a)(1) Any person who is sentenced by a circuit court to the Division of Correction or the Division of Community Correction and is awaiting transfer to the Division of Correction or Division of Community Correction may earn meritorious good time in accordance with law and rules as adopted by the Board of Corrections.

(2) Meritorious good time will only be given for being housed in a jail or similar secure facility while awaiting transfer on the conviction resulting in a sentence from that county.

(3) Meritorious good time will be calculated upon reception within the respective division.

(b) Meritorious good time will be awarded unless the county sheriff of record submits written objections to such award based on the prisoner’s behavior, discipline, and the conduct or performance of such duties and responsibilities as assigned by such county sheriff or his or her designated representatives.

(c) This meritorious good time award is subject to all rules regarding meritorious good time including, but not limited to, those rules for forfeiture of meritorious good time as adopted by the board.

History. Acts 1993, No. 536, § 5; 1993, No. 558, § 5; 2019, No. 315, §§ 899, 900; 2019, No. 910, §§ 795, 796.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a)(1); and deleted “and regulations” following “rules” and substituted “rules” for the second occurrence of “regulations” in (c).

The 2019 amendment by No. 910, in (a)(1), substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction”; and substituted “division” for “department” in (a)(3).

SUBCHAPTER 3 — EDUCATION

- SECTION.
- 12-29-301. School system created.
 - 12-29-302. Rules.
 - 12-29-303. Privileges of students — Limitations.
 - 12-29-304. Costs and funding.
 - 12-29-306. Riverside Vocational and Technical School — Legislative intent.
 - 12-29-307. Riverside Vocational and Technical School — Establishment.

- SECTION.
- 12-29-309. Riverside Vocational and Technical School — Facilities — Operations — Rules.
 - 12-29-310. Riverside Vocational and Technical School — Cost of implementation and operation.
 - 12-29-311. Dyslexia screening — Science of reading — Intervention services.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and

operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-29-301. School system created.

(a) Properties owned by the State of Arkansas and occupied by the various units of the Division of Correction and the Division of Community Correction are by this subchapter designated as a qualified school district to be known as the "Corrections School System".

(b) The system is created for the purpose of providing elementary, secondary, and vocational and technical education to qualified persons incarcerated in facilities of the Division of Correction and the Division of Community Correction or to qualified persons supervised by the Division of Community Correction, including those on probation and parole or any type of post-prison release or transfer who are not high school graduates, irrespective of age.

(c) The Board of Corrections shall act as the Board of Directors of the Corrections School System.

(d)(1) The system's chief administrative officer shall be under the direct authority of the Board of Directors of the Corrections School System.

(2) Subject to the approval of the Board of Directors of the Corrections School System, the chief administrative officer or superintendent of the system shall have supervisory authority over the employees of the system, including, but not limited to, assistant superintendents, principals, and teachers.

History. Acts 1973, No. 279, §§ 1, 2; A.S.A. 1947, §§ 46-1301, 46-1302; Acts 2005, No. 496, § 1; 2019, No. 910, § 797.

Amendments. The 2019 amendment substituted "Division of Correction" for

"Department of Correction" and "Division of Community Correction" for "Department of Community Correction" throughout (a) and (b).

12-29-302. Rules.

The Board of Corrections and the State Board of Education are directed, authorized, and empowered to adopt rules as are necessary to implement the provisions of this subchapter.

History. Acts 1973, No. 279, § 4; A.S.A. 1947, § 46-1304; Acts 2019, No. 315, § 901.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the section heading and in the text.

12-29-303. Privileges of students — Limitations.

A school established under this subchapter and a person incarcerated who attends the school shall be entitled to certain educational privileges provided generally to common public schools and adult education programs administered by the State Board of Education to students who attend the common public schools and adult education programs under the laws of the State of Arkansas, provided the privileges do not conflict with the rules and policies of the State Board of Education, the Division of Correction, and the Division of Community Correction or the laws of the state respecting the establishment and operation of the Division of Correction and the Division of Community Correction.

History. Acts 1973, No. 279, § 5; A.S.A. substituted “Division of Correction” for 1947, § 46-1305; Acts 2005, No. 496, § 2; “Department of Correction”, and “Division of Community Correction” for “Department of Community Correction” twice. 2019, No. 910, § 798.

Amendments. The 2019 amendment

12-29-304. Costs and funding.

(a) The cost of implementing and operating the Corrections School System shall be borne by the state and shall be paid from funds appropriated by the General Assembly from the general revenues of the state to the Division of Correction, the Division of Community Correction, and the Division of Elementary and Secondary Education, together with any federal funds that may be available for that purpose and from any funds generated from the operations of the Division of Correction and the Division of Community Correction, in the following manner:

(1) The cost of facilities, equipment, and current operation in excess of the amount of grants and aids received from the Division of Elementary and Secondary Education shall be borne by the Division of Correction and the Division of Community Correction as approved by the Board of Corrections; and

(2)(A) The system, as other school districts in the state, shall share in the distribution of grants and aids from the Division of Elementary and Secondary Education.

(B) However, in no case shall the moneys from the Public School Fund to the system be in excess of the line item appropriation provided to the system in the fund.

(b)(1) Recognizing that the primary roles, duties, and responsibilities of the Division of Correction and the Division of Community Correction are to serve as penal and correctional institutions, the system shall be exempt from and shall not be penalized in any manner for not complying with:

(A) All of the following:

(i) The Quality Education Act of 2003, § 6-15-201 et seq.;

(ii) The Arkansas Comprehensive Testing, Assessment, and Accountability Program Act, § 6-15-401 et seq.;

(iii) Sections 6-15-901, 6-15-902, 6-15-2001 — 6-15-2008, 6-15-2101 — 6-15-2107, 6-15-2201, 6-15-2301, and 6-16-1201 — 6-16-1206;

(iv) The Arkansas Fiscal Assessment and Accountability Program, § 6-20-1901 et seq.; and

(v) The Arkansas Educational Financial Accounting and Reporting Act of 2004, § 6-20-2201 et seq.;

(B) Any state laws or rules adopted to comply with the federal Elementary and Secondary Education Act as reauthorized under the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 et seq., as in existence on January 1, 2005; and

(C) Any rule of the State Board of Education related to the provisions listed in this subdivision (b)(1).

(2) The system's exemption from or noncompliance with the provisions under this subsection shall not affect the system's, the Division of Correction's, or the Division of Community Correction's eligibility to apply for or receive state grants or aids for public school districts as authorized in this subchapter and related rules.

History. Acts 1973, No. 279, § 3; 1985, No. 751, § 1; A.S.A. 1947, § 46-1303; Acts 1989, No. 671, § 1; 1999, No. 391, § 37; 2005, No. 496, § 3; 2019, No. 910, § 799.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and similar

language, "Division of Community Correction" for "Department of Community Correction" and similar language, and "Division of Elementary and Secondary Education" for "Department of Education" throughout the section.

12-29-306. Riverside Vocational and Technical School — Legislative intent.

(a) This section and §§ 12-29-307 — 12-29-310 are intended to create an additional state vocational and technical school to provide vocational and technical education and training opportunities to qualified persons incarcerated in facilities of the Division of Correction and the Division of Community Correction or to qualified persons supervised by the Division of Community Correction, including those on probation and parole or any type of post-prison release or transfer.

(b) This section and §§ 12-29-307 — 12-29-310 are not intended to modify or repeal any of the laws of this state pertaining to vocational and technical schools or vocational and technical education.

History. Acts 1985, No. 288, § 4; A.S.A. 1947, § 46-1307; Acts 2005, No. 496, § 4; 2019, No. 910, § 800.

Amendments. The 2019 amendment, in (a), substituted "Division of Correction"

for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" twice.

12-29-307. Riverside Vocational and Technical School — Establishment.

There is established a state vocational and technical school, to be known as the "Riverside Vocational and Technical School", to be

operated by the Division of Correction and the Division of Community Correction at such facilities of the Division of Correction and the Division of Community Correction as may be designated by the Board of Corrections.

History. Acts 1985, No. 288, § 1; A.S.A. 1947, § 46-1308; Acts 2005, No. 496, § 5; 2019, No. 910, § 801. **Amendments.** The 2019 amendment rewrote the section.

12-29-309. Riverside Vocational and Technical School — Facilities — Operations — Rules.

(a)(1) The Division of Correction and the Division of Community Correction shall locate facilities and operate vocational or technical education or training programs within the Riverside Vocational and Technical School.

(2) The operation of the school is subject to such special rules deemed appropriate for the operation of vocational or technical education or training programs at the correctional institutions under the control of the Division of Correction and the Division of Community Correction in accordance with agreements and rules mutually developed and agreed to by the Department of Education and the Board of Corrections.

(b)(1) The school shall be entitled to all funds, rights, and privileges and shall be operated in the same manner as other area vocational and technical schools are operated in this state.

(2) However, the school shall be operated in accordance with the rules for the operation of vocational or technical education or training programs at facilities of the Division of Correction and the Division of Community Correction as provided in §§ 12-29-306 — 12-29-310.

History. Acts 1985, No. 288, § 2; A.S.A. 1947, § 46-1309; Acts 2005, No. 496, § 7; 2015, No. 1198, § 6; 2019, No. 910, § 6340.

Amendments. The 2019 amendment substituted “Division of Correction and the Division of Community Correction” for “Career Education and Workforce Development Board” in (a)(1); in (a)(2), substituted “Division of Correction” for “Department of Correction” for “Division of Community Correction” for “Department of Community Correction”.

12-29-310. Riverside Vocational and Technical School — Cost of implementation and operation.

(a) The cost of implementing and operating the Riverside Vocational and Technical School at facilities of the Division of Correction and the Division of Community Correction as authorized by this section and §§ 12-29-306 — 12-29-309 shall be borne by the state and shall be paid from funds appropriated by the General Assembly to the school, the Division of Correction, and the Division of Community Correction, together with any federal funds that may be available for this purpose in the following manner:

(1) The cost of facilities and equipment in excess of the amount of moneys provided by the school shall be borne by the Division of Correction and the Division of Community Correction as approved by the Board of Corrections; and

(2)(A) This section and §§ 12-29-306 — 12-29-309 contemplate that the Division of Correction and the Division of Community Correction will provide facilities for the vocational and technical education programs operated by the school.

(B) However, nothing in this section and §§ 12-29-306 — 12-29-309 shall prohibit the Career Education and Workforce Development Board from providing facilities or sharing in the cost of facilities and from providing or sharing in the cost of repairing, maintenance, and upkeep of the buildings and facilities with the Division of Correction and the Division of Community Correction as funds are provided by the General Assembly, or are otherwise available for these purposes.

(b) The school shall be administered under the direction and supervision of the chief administrative officer of the Corrections School System or the Director of the Riverside Vocational and Technical School under the direct authority of the Board of Directors of the Corrections School System.

History. Acts 1985, No. 288, § 3; A.S.A. 1947, § 46-1310; Acts 2005, No. 496, § 8; 2019, No. 910, § 802.

Amendments. The 2019 amendment substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Depart-

ment of Community Correction” throughout the section; deleted “the Department of Career Education, and to” following “to the school” in the introductory language of (a); and deleted “and the Department of Career Education” following “by the school” in (a)(1).

12-29-311. Dyslexia screening — Science of reading — Intervention services.

The Superintendent of the Arkansas Correctional School shall:

(1) Promulgate rules that require that:

(A) Teachers within the Arkansas Correctional School have and demonstrate awareness of the best practices of scientific reading instruction as required under the Right to Read Act, § 6-17-429;

(B) Each inmate who does not have a high school diploma or its equivalent receive:

(i) A reading proficiency-level assessment; and

(ii)(a) Dyslexia screening administered with fidelity, as defined under § 6-41-602.

(b) If the Arkansas Correctional School provides dyslexia intervention to an inmate who demonstrates under subdivision (1)(B)(ii)(a) of this section that the inmate is reading below the proficiency level required to be a high-functioning reader, the dyslexia intervention the Arkansas Correctional School provides shall be evidence-based and consistent with science-based research specifically tailored to addressing dyslexia; and

(C) A process be established by which new-intake inmates are:

- (i) Assessed and administered a dyslexia screening with fidelity, as defined under § 6-41-602; and
- (ii) Provided dyslexia intervention with fidelity, as defined under § 6-41-602, that is evidence-based and consistent with science-based research specifically tailored to addressing dyslexia; and
- (2) Submit a plan to the Division of Correction that allows inmates to voluntarily receive:
 - (A) A reading proficiency-level assessment;
 - (B) Dyslexia screening administered with fidelity, as defined under § 6-41-602; and
 - (C) Reading instruction that is consistent with the science of reading, as provided under the Right to Read Act, § 6-17-429.

History. Acts 2019, No. 1088, § 2.

A.C.R.C. Notes. Acts 2019, No. 1088, § 1, provided: "Legislative intent. The General Assembly finds that:

"(1) Individuals undergo a process known as 'intake' when entering the Department of Correction system as a new inmate;

"(2) The intake process for new inmates can take at least three (3) to five (5) days, and sometimes longer in certain situations;

"(3) During intake, inmates are given an academic examination amongst other relevant examinations;

"(4) The inmate population of the department is approximately eighteen thousand (18,000);

"(5) The mission of the department is to:

"(A) Protect public safety by carrying out the mandate of the courts;

"(B) Provide a safe and humane environment for all staff members and inmates;

"(C) Strengthen the work ethic of inmates through teaching and instilling good habits; and

"(D) Provide opportunities for staff members and inmates to improve spiritually, mentally, and physically; and

"(6) Part of the mission and vision of the department is to provide correctional services that return inmates to the community as productive people."

Acts 2019, No. 1088, § 3, provided: "Temporary language.

"(a) The superintendent of the Arkansas Correctional School shall comply with:

"(1) Section 12-29-311(1) by January 1, 2020; and

"(2) Section 12-29-311(2) by October 1, 2020.

"(b)(1) When adopting the initial rules to implement § 12-29-311, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

"(A) On or before January 1, 2020; or

"(B) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

"(2) The superintendent of the Arkansas Correctional School shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020."

SUBCHAPTER 4 — MEDICAL CARE

SECTION.

12-29-402. Physical examination — Assignment to labor.

12-29-403. Inmates with a disability — Duty of physician.

12-29-404. Medical parole for a terminal illness or permanent incapacitation — Definitions.

SECTION.

12-29-405. Inmates with mental illness.

12-29-406. Treatment for deviant sexual behavior.

12-29-407. Medicaid suspension.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-29-402. Physical examination — Assignment to labor.

(a) All prisoners committed to the Division of Correction shall be given a physical examination initially upon arrival and then as often as determined by medical staff of the division.

(b) Inmates shall be assigned to labor as shall be fitting, with due consideration being given to their physical condition.

History. Acts 1943, No. 157, § 3; 1981, No. 59, § 2; A.S.A. 1947, § 46-138; Acts 2019, No. 910, § 803.

in (a), substituted "Division of Correction" for "Department of Correction" and "division" for "department".

Amendments. The 2019 amendment,

12-29-403. Inmates with a disability — Duty of physician.

(a)(1) Each new inmate committed to the Division of Correction shall be given a medical examination during the intake process.

(2)(A) During the medical examination required under subdivision (a)(1) of this section, the medical provider shall determine what restrictions, if any, shall be placed upon the inmate's work assignments.

(B) Restrictions placed upon an inmate's work assignments under subdivision (a)(2)(A) of this section shall be updated as medically necessary.

(b) The division shall not assign an inmate to a work assignment that conflicts with a restriction determined by the medical provider for the division under subdivision (a)(2) of this section.

(c) Whenever the medical provider updates the restrictions under subdivision (a)(2) of this section, the division shall adjust the inmate's work assignments as necessary to comply with the updated restrictions.

History. Acts 1893, No. 76, § 34, p. 121; C. & M. Dig., § 9665; Pope's Dig., § 12705; A.S.A. 1947, § 46-151; Acts 2009, No. 208, § 1; 2013, No. 295, § 5; 2019, No. 910, § 804.

Amendments. The 2019 amendment

substituted "Division of Correction" for "Department of Correction" in (a)(1); and substituted "division" for "department" in (b) and (c); and made stylistic changes in (b).

12-29-404. Medical parole for a terminal illness or permanent incapacitation — Definitions.

(a) As used in this section:

(1) “Permanently incapacitated” means, as determined by a licensed physician, that an inmate:

(A) Has a medical condition that is not necessarily terminal but renders him or her permanently and irreversibly incapacitated; and

(B) Requires immediate and long-term care; and

(2) “Terminally ill” means, as determined by a licensed physician, that an inmate:

(A) Has an incurable condition caused by illness or disease; and

(B) Will likely die within two (2) years due to the illness or disease.

(b) The Director of the Division of Correction or the Director of the Division of Community Correction shall communicate to the Parole Board when, in the independent opinions of either a Division of Correction physician or Division of Community Correction physician, and a consultant physician in Arkansas, an inmate is either terminally ill or permanently incapacitated and should be considered for transfer to parole supervision.

(c)(1) Upon receipt of a communication described in subsection (b) of this section, the board shall assemble or request all such information as is germane to determine whether the inmate is eligible under this section for immediate transfer to parole supervision.

(2) If the facts warrant and the board is satisfied that the inmate’s physical condition makes the inmate no longer a threat to public safety, the board may approve the inmate for immediate transfer to parole supervision.

(d) An inmate is not eligible for parole supervision under this section if he or she is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and:

(1) The inmate is assessed as a Level 3 offender or higher; or

(2) A victim of one (1) or more of the inmate’s sex offenses was fourteen (14) years of age or younger.

(e) The board may revoke a person’s parole supervision granted under this section if the person’s medical condition improves to the point that he or she would initially not have been eligible for parole supervision under this section.

History. Acts 1893, No. 76, § 35, p. 121; C. & M. Dig., § 9666; Pope’s Dig., § 12706; A.S.A. 1947 § 46-152; Acts 1991, No. 771, § 1; 1995, No. 290, § 1; 2011, No. 570, § 75; 2019, No. 910, § 805.

Amendments. The 2019 amendment

substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction” throughout (b).

12-29-405. Inmates with mental illness.

(a) The Division of Correction is authorized to develop in-house due process procedures as approved by the Board of Corrections in accor-

dance with United States Supreme Court guidelines for the voluntary or involuntary treatment of inmates with mental illness at the facilities and programs of the Mental Health Services Section of the Division of Correction.

(b)(1) While the inmate is in treatment, the inmate's sentence shall continue to run.

(2) If an inmate's sentence expires while in treatment, the division shall release the inmate or pursue involuntary admission under the appropriate procedures prescribed by existing laws governing the involuntary treatment of individuals with mental illness.

History. Acts 1981, No. 507, §§ 1, 2; A.S.A. 1947, §§ 46-153.1, 46-153.2; Acts 1993, No. 884, §§ 2, 3; 2019, No. 910, §§ 806, 807.

Amendments. The 2019 amendment, in (a), substituted "Division of Correction" for "Department of Correction", and sub-

stituted "Mental Health Services Section of the Division of Correction" for "Mental Health Services Section of the Division of Health Treatment Services of the Department of Correction"; and substituted "division" for "department" in (b)(2).

12-29-406. Treatment for deviant sexual behavior.

(a) The purpose of this section is to enable the Division of Correction to establish a core program that will utilize services of medical and mental health providers in the community to provide intensive treatment of inmates with paraphilia, commonly known as sexual deviations, during their incarceration to increase their chance of returning to society successfully upon their release.

(b)(1) The Mental Health Services Section of the Division of Correction is authorized to establish and maintain a program for intensive treatment for control of deviant sexual behavior of inmates in a specialized treatment setting and to cooperate with the medical services provider in screening for sexually transmitted diseases as part of this program.

(2) The division may develop the program in such a manner as to utilize outside professionals from the medical and mental health fields to provide both teaching and training opportunities.

(c) The section shall adopt, promulgate, and enforce such rules, policies, and standards as may be necessary to carry out the intent and purposes of this section.

History. Acts 1987, No. 777, §§ 1-3; 2019, No. 315, § 902; 2019, No. 910, § 808.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in (c).

The 2019 amendment by No. 910 substituted "Division of Correction" for "De-

partment of Correction" in (a); substituted "Mental Health Services Section of the Division of Correction" for "Mental Health Services Section of the Division of Health Treatment Services of the Department of Correction" in (b)(1); and substituted "division" for "department" in (b)(2).

12-29-407. Medicaid suspension.

(a) When an individual who is enrolled in a Medicaid program or the Health Care Independence Program is incarcerated to the custody of the Division of Correction, the Division of Community Correction, or detained in a county jail, city jail, juvenile detention facility, or other Division of Youth Services of the Department of Human Services commitment, the Department of Human Services shall suspend, to the degree feasible, the individual's coverage during the period of incarceration for up to twelve (12) months from the initial approval or renewal, unless prohibited by law.

(b) When an individual with suspended Medicaid eligibility receives eligible medical treatment or is released from custody, the Department of Human Services shall reinstate, to the degree feasible, the individual's coverage for up to twelve (12) months from the initial approval or renewal, unless prohibited by law.

(c) The Department of Human Services shall ensure that the suspension and reinstatement process is automated and that protocols are developed to maximize Medicaid reimbursement for allowable medical services and essential health benefits.

History. Acts 2015, No. 895, § 12; 2019, No. 910, § 809.
Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (a).

SUBCHAPTER 5 — STATE PRISON INMATE CARE AND CUSTODY
REIMBURSEMENT ACT

| | |
|-----------------------------------------------------------------|------------------------------------------------------------------------|
| SECTION. 12-29-506. Duties of Attorney General — Assistance. | SECTION. 12-29-507. Deposit of recovered moneys — Payment of costs. |
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Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-29-506. Duties of Attorney General — Assistance.

(a) The Attorney General shall enforce this subchapter.

(b) However, the Attorney General may refer to the prosecuting attorney of the county from which the inmate in the Division of Correction or the person residing in a Division of Community Correction facility was sentenced, or to the prosecuting attorney of the county in which any property or estate of the inmate or person is located, to investigate or assist in legal proceedings to obtain the reimbursements for the cost of care of the inmate or person, as authorized in this subchapter.

History. Acts 1981, No. 715, § 7; A.S.A. 1947, § 46-1707; 2013, No. 289, § 5; 2017, No. 250, § 25; 2019, No. 910, § 810.

Amendments. The 2017 amendment, in (b), substituted “the inmate or person” for “any such inmate” following “estate of” and “inmate or person” for “such prisoners” following “care of”.

The 2019 amendment substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction” in (b).

12-29-507. Deposit of recovered moneys — Payment of costs.

(a)(1) All moneys recovered for the cost of care of prisoners in a facility of the Division of Correction or the Division of Community Correction under this subchapter shall be deposited into the State Treasury.

(2) The Treasurer of State shall credit the moneys to the appropriate fund established by law from which appropriations to the Division of Correction or the Division of Community Correction are made for inmate care and custody at the Division of Correction or the Division of Community Correction.

(b) However, the cost of making any investigation necessary to secure the reimbursements provided under this subchapter shall be paid from the reimbursement secured under this subchapter in those instances in which the General Assembly has not otherwise provided funds to defray the cost of the investigations.

History. Acts 1981, No. 715, § 6; A.S.A. 1947, § 46-1706; 2013, No. 289, § 6; 2019, No. 910, § 811.

Amendments. The 2019 amendment substituted “Division of Correction” for

“Department of Correction” and “Division of Community Correction” for “Department of Community Correction” throughout (a).

CHAPTER 30

STATE INMATE INDUSTRIES AND LABOR

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PRISON-MADE GOODS ACT OF 1967.
3. FARMS.
4. WORK-STUDY RELEASE.
5. PRIVATIZED PRISON-MADE GOODS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 12-30-101. Bartering products of institutions.
- 12-30-102. Buying and selling products of institutions.

SECTION.

- 12-30-103. Workcraft program.
- 12-30-104. Sale of workcraft items.
- 12-30-105. Marketing contracts.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-30-101. Bartering products of institutions.

(a)(1) In the passage of this section, the General Assembly is cognizant of the diversity of agricultural, livestock, processing, manufacturing, fabricating, and production resources of penal and correctional institutions in this state, in other states, and of the federal government.

(2) It is recognized that each of the correctional institutions may carry on a program of production, industries, manufacturing, and processing essential to its own needs and requirements, and that in a number of instances the institutions could share, through trade and barter agreements, their production, materials, and goods for the mutual benefit and advantage of their respective institutions.

(b) It is the intent of this section to enable the Board of Corrections of this state to enter into agreements with the managing boards or commissions of correctional institutions of other states, or with appropriate federal officials having custody or control of federal correctional institutions, for the exchange of raw materials, goods, and products in accordance with terms and agreements which the respective institutions find to be advantageous and of benefit to their respective institutions and programs.

(c)(1) The board, with the approval of the Governor, is authorized to enter into contracts, compacts, or agreements with the appropriate governing officials of correctional institutions of other states or of the federal government for the trading or bartering of raw materials, goods, and products produced by and belonging to their respective institutions.

(2) This may be done in accordance with the terms and conditions the board and the governing officials of correctional institutions of other

states or of the federal government may deem advantageous and appropriate for their respective institutions and programs.

(d) The agreements may include matters such as the exchange of raw materials for finished products produced in correctional institutions or the processing of raw materials into finished products in exchange for a portion of the raw materials processed.

(e) Copies of all such agreements, compacts, or contracts entered into with correctional institutions of other states or with the federal government, as authorized in this section, shall be filed with the Auditor of State and the Chief Fiscal Officer of the State.

(f) A complete set of books and records shall be kept with respect to all transactions, deliveries, and obligations under each compact, contract, or agreement. Copies shall be filed with the Auditor of State and the Chief Fiscal Officer of the State and shall be available to public inspection during all normal business hours.

(g) The board may make reasonable rules governing the Division of Correction in the administration of contracts, compacts, or agreements made under the provisions of this section.

History. Acts 1975, No. 361, §§ 1, 2; A.S.A. 1947, §§ 46-250, 46-250n; Acts 2019, No. 315, § 903; 2019, No. 910, § 812.

by No. 315 deleted “and regulations” following “rules” in (g).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” in (g).

Amendments. The 2019 amendment

12-30-102. Buying and selling products of institutions.

(a) The Board of Corrections is authorized to enter into contracts, compacts, or agreements with the appropriate governing officials of agencies of other states or of the federal government for the buying and selling of raw materials, goods, and products produced by and belonging to their respective institutions in accordance with such terms and conditions as the board and the governing officials of correctional institutions of other states or the federal government may deem advantageous and appropriate for their respective institutions and programs.

(b) These agreements may include matters such as the buying and selling of raw materials for finished products produced in correctional institutions or for the processing of materials into finished products.

(c) Copies of all such agreements, compacts, or contracts entered into with correctional institutions of other states, or with the federal government as authorized in this section, shall be filed with the Chief Fiscal Officer of the State.

(d)(1) A complete set of books and records shall be kept with respect to all transactions, deliveries, and obligations under each compact, contract, or agreement.

(2) Copies shall be filed with the Chief Fiscal Officer of the State and shall be available to public inspection during all normal business hours.

(e) The board may make reasonable rules governing the Division of Correction in the administration of contracts, compacts, or agreements made under the provisions of this section.

History. Acts 1981, No. 108, §§ 1-3; A.S.A. 1947, §§ 46-251 — 46-253; Acts 2019, No. 315, § 904; 2019, No. 910, § 813.

Amendments. The 2019 amendment

by No. 315 deleted “and regulations” following “rules” in (e).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” in (e).

12-30-103. Workcraft program.

(a) The Division of Correction and the Division of Community Correction are authorized to operate a workcraft program that offers instruction and training for their inmates, thereby helping prepare them for employment after incarceration.

(b) The Board of Corrections is authorized to establish rules for operating the workcraft program, which shall include, but not be limited to, the following:

- (1) Acquisition of necessary machinery, materials, and equipment;
- (2) Establishment of procedures for public sale of inmate-produced craft;
- (3) Inmate eligibility for participation in the workcraft program; and
- (4) Establishment of a workcraft program revolving fund.

History. Acts 1975, No. 702, § 1; A.S.A. 1947, § 46-248; Acts 1995, No. 205, § 1; 1995, No. 292, § 1; 2019, No. 315, § 905; 2019, No. 910, § 814.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in the introductory language of (b).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction” in (a).

12-30-104. Sale of workcraft items.

(a)(1) The sale of items produced in the Division of Correction or the Division of Correction workcraft programs may be through one (1) or more retail outlets operated by the Division of Correction or the Division of Community Correction.

(2) The public availability of these items for sale will be made known through advertising or other public marketing communications, or both.

(b)(1) Prices of workcraft items shall be sufficient to cover production cost.

(2) A percentage of sale proceeds, as determined by rule, will accrue to the individual product-creating inmate’s account and the remainder to a workcraft program revolving fund.

History. Acts 1975, No. 702, § 2; 1981, No. 118, § 1; A.S.A. 1947, § 46-249; Acts 1995, No. 205, § 2; 1995, No. 292, § 2;

2019, No. 315, § 906; 2019, No. 910, § 815.

Amendments. The 2019 amendment

by No. 315 substituted “rule” for “rules and regulations” in (b)(2).

The 2019 amendment by No. 910 substituted “Division of Correction” for “De-

partment of Correction” and “Division of Community Correction” for “Department of Community Correction” throughout (a)(1).

12-30-105. Marketing contracts.

(a)(1) The Division of Correction may enter into marketing contracts with dealers, retailers, distributors, and manufacturer representatives permitting them to market and sell all products and services produced by the Division of Correction industry program in accordance with existing laws and state purchasing rules.

(2) The Industry Division of the Division of Correction will be responsible for all billing of purchased products and services to ensure that only customers authorized by law are making said purchases.

(b) Reimbursement to companies on contract for marketing of said products and services will be based on rules established by the Board of Corrections.

History. Acts 1989 (3rd Ex. Sess.), No. 48, §§ 1, 2; Acts 2019, No. 315, § 907; 2019, No. 910, § 816.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a)(1) and (b).

The 2019 amendment by No. 910, in (a)(1), substituted “Division of Correction” for “Department of Correction” and “division” for “department”; and substituted “division” for “department” in (a)(2).

SUBCHAPTER 2 — PRISON-MADE GOODS ACT OF 1967

SECTION.

- 12-30-203. Establishment of prison industries.
- 12-30-204. Purchase of goods by state and local agencies.
- 12-30-205. Purchase of goods by nonprofit organizations and other individuals.

SECTION.

- 12-30-206. Prices.
- 12-30-210. Annual report.
- 12-30-211. Rules.
- 12-30-215. Purchase for construction or operation of prison.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-30-203. Establishment of prison industries.

The Board of Corrections may purchase, in the manner provided by law, equipment, raw materials, and supplies and engage supervisory personnel necessary to establish and maintain for this state, at the Division of Correction or institution under control of the board, industries for the utilization of services of prisoners in the manufacture or production of articles or products as may be needed for the construction, operation, maintenance, or use of any office, department, division, institution, or agency supported, in whole or in part, by this state and the political subdivisions of this state.

History. Acts 1967, No. 473, § 3; A.S.A. substituted “Division of Correction” for 1947, § 46-236; 2013, No. 1277, § 3; 2019, “Department of Correction” and inserted No. 910, § 817. “division”.

Amendments. The 2019 amendment

12-30-204. Purchase of goods by state and local agencies.

(a)(1) All offices, departments, divisions, institutions, and agencies of this state which are supported in whole or in part by this state, and all political subdivisions of this state, may purchase, at the discretion of the office, department, division, institution, or agency, from the Board of Corrections any products required by the offices, departments, divisions, institutions, agencies, or political subdivisions of this state produced or manufactured by the Division of Correction utilizing prison labor as provided for by this subchapter.

(2)(A)(i) The Revenue Division may request that the board propose the purchase of license plates which are necessary as evidence of registration of motor vehicles and trailers to be issued by the Revenue Division’s revenue offices.

(ii) The license plates would be produced or manufactured by the Division of Correction utilizing prison labor.

(B) The provisions of this subdivision (a)(2) shall be applicable beginning with the contracts for purchase or any purchases of license plates which are required after the expiration of any contracts for the purchase or manufacture of license plates that are in effect.

(b) Such offices, departments, divisions, institutions, and agencies shall not be required to submit an invitation for bid to the board for all products known to be produced or manufactured by the Division of Correction utilizing prison labor as provided for by this subchapter.

(c)(1) The Division of Correction may enter into an agreement with the Old State House Commission to utilize inmate labor in the production or manufacture of items for resale by the Old State House Museum.

(2) Except as provided in subdivision (c)(3) of this section, the proceeds from the sales of the items produced or manufactured under subdivision (c)(1) of this section shall be used by the Old State House Museum to:

(A) Develop exhibits and programs about the history of the Division of Correction; or

(B) Maintain the Old State House Museum's collection of the Division of Correction artifacts.

(3) The Division of Correction and the commission may by rule modify the use of the proceeds from the sale of items produced or manufactured under subdivision (c)(1) of this section.

(d) All purchases made pursuant to this section shall be made through the Division of Correction's purchasing division, upon requisition by the proper authority of the office, department, division, institution, agency, or political subdivision of this state requiring the articles or products.

History. Acts 1967, No. 473, §§ 4, 5; 1985, No. 825, § 1; A.S.A. 1947, §§ 46-237, 46-238; Acts 1995, No. 944, § 1; 1997, No. 1284, § 1; 2009, No. 307, § 1; 2019, No. 910, § 818.

Amendments. The 2019 amendment substituted "Division of Correction" for

"Department of Correction" and similar language, and inserted "divisions" and similar language throughout the section; and substituted "Revenue Division of the Department of Finance and Administration's" for "division's" in (2)(A)(i).

12-30-205. Purchase of goods by nonprofit organizations and other individuals.

(a) A nonprofit organization may purchase goods produced by the Division of Correction's Industry Division as provided for by this subchapter.

(b)(1) Goods produced by the Industry Division as provided for by this subchapter may also be purchased by:

(A) Current employees and retirees of the Division of Correction;

(B)(i) Current employees and retirees of the public offices, departments, divisions, institutions, school districts, and agencies of this state.

(ii) Subdivision (b)(1)(B)(i) of this section does not include members of the General Assembly; and

(C) Current and former members of the Board of Corrections.

(2) Goods purchased by an individual under subdivision (b)(1) of this section:

(A) Shall be for personal use only and not for resale; and

(B) Exclusive of fees assessed by the Industry Division and applicable taxes, may not exceed two hundred dollars (\$200) for any one (1) purchase of home furnishings for any one (1) fiscal year.

(c) Goods or products that are produced, assembled, or packaged in whole or in part by the Division of Correction utilizing prison labor may be sold to inmates of the Division of Correction, Division of Community Correction, or a local correctional facility.

History. Acts 1967, No. 473, § 4; 1985, No. 825, § 1; A.S.A. 1947, § 46-237; Acts 1995, No. 1375, § 1; 2005, No. 1182, § 1; 2009, No. 502, § 1; 2011, No. 779, § 24; 2015, No. 1061, § 1; 2019, No. 910, § 819; 2019, No. 982, § 1.

Amendments. The 2019 amendment by No. 910 substituted "Division of Correction's Industry Division" for "Department of Correction's Industry Division" in (a); substituted "Division of Correction" for "Department of Correction in (b)(1)(A), and inserted "divisions" in (b)(1)(B)(i); and, in (c), substituted "Division of Correction" for "Department of Correction" twice and "Division of Community Correction" for "Department of Community Correction".

The 2019 amendment by No. 982 deleted "upon the condition that the goods

may not be resold for profit" following "subchapter" in (a); deleted "excluding furniture and seating" following "subchapter" in the introductory language of (b)(1); substituted "Current employees and retirees of the public offices" for "All employees of the public offices" in (b)(1)(B)(i); substituted "section does not include" for "section shall not include" in (b)(1)(B)(ii); added the (b)(2)(A) designation; added (b)(2)(B); and made stylistic changes.

12-30-206. Prices.

(a) The Board of Corrections shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished.

(b) The prices shall be uniform and nondiscriminating to all and shall not exceed the wholesale market prices with the exception of goods or items produced, assembled, or packaged in whole or in part specifically for sale or resale to inmates of the Division of Correction, Division of Community Correction, or a local correctional facility.

History. Acts 1967, No. 473, § 9; A.S.A. 1947, § 46-242; 2015, No. 1061, § 2; 2019, No. 910, § 820.

Amendments. The 2019 amendment

substituted "Division of Correction" for "Department of Correction" and "Division of Community Correction" for "Department of Community Correction" in (b).

12-30-210. Annual report.

(a) The Division of Correction's Industry Division shall make an annual full and detailed report of:

(1) All materials, machinery, or other property procured, the cost of the materials, machinery, or other property procured, and the expenditures made during the last preceding year for production purposes, together with a statement of all materials then on hand to be produced, in process of production, or already produced;

(2) All machinery, fixtures, or other appurtenances for the purpose of carrying out the work of the Industry Division;

(3) The earnings realized during the last preceding fiscal year as the proceeds of the sale of items produced by the Industry Division; and

(4) The Industry Division's current inventory stock price list.

(b)(1) The report shall be verified by the oath of the Director of the Division of Correction and shall be forwarded to the Board of Corrections by the director within ninety (90) days after the end of the last preceding fiscal year.

(2) The board shall review the report described under this section and shall make the report available on the Division of Correction's website.

History. Acts 1967, No. 473, § 10; A.S.A. 1947, § 46-243; Acts 2019, No. 910, § 821; 2019, No. 982, § 2.

A.C.R.C. Notes. Acts 2019, No. 910, § 821, amended subsection (a) of this section to change “Director of the Department” to “Director of the Division” and subdivision (a)(3) of this section to change “Department” to “Division”. However, Acts 2019, No. 982, § 2, specifically repealed these references.

Amendments. The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” in the introductory language of (a) and (a)(3).

The 2019 amendment by No. 982 rewrote the introductory language of (a); in (a)(1), substituted “property procured, the cost of the materials, machinery, or other property procured, and the expenditures” for “property procured, the cost thereof, and the expenditures”, substituted “pro-

duction” for “manufacturing” and made similar changes, and substituted “already produced” for “manufactured”; substituted “carrying out the work of the division” for “carrying on the labor of the prisoners” in (a)(2); in (a)(3), inserted “fiscal” and substituted “proceeds of the sale of items produced by the division” for “proceeds of the labor of the prisoners at the Department of Correction or penal institutions of this state”; added (a)(4); in (b)(1), substituted “report” for “statement”, substituted “the Director of the Department of Correction” for “the manager or authorities having charge of penal institutions to be just and true”, substituted “the director within ninety (90) days” for “the manager or authorities having charge within thirty (30) days”, and inserted “fiscal”; added (b)(2); and made stylistic changes.

12-30-211. Rules.

The Board of Corrections shall have power and authority to prepare and promulgate rules which are necessary to give effect to the provisions of this subchapter with respect to matters of administration and procedure respecting them.

History. Acts 1967, No. 473, § 11; A.S.A. 1947, § 46-244; Acts 2019, No. 315, § 908.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in the section heading and in the text.

12-30-215. Purchase for construction or operation of prison.

Any contractor or subcontractor who has entered into a contract with or for the benefit of a state board, state agency, or state-supported institution of higher education for constructing, equipping, or operating, in whole or in part, any facility of the board, agency, or institution may purchase goods produced by the Division of Correction and the Division of Community Correction for use in the performance of the contract.

History. Acts 1997, No. 877, § 1; 1999, No. 145, § 1; 2019, No. 910, § 822.

Amendments. The 2019 amendment substituted “Division of Correction” for

“Department of Correction” and “Division of Community Correction” for “Department of Community Correction”.

SUBCHAPTER 3 — FARMS

SECTION.

12-30-301. Farming and livestock activities.

SECTION.

12-30-303. Cooperation of Cooperative Extension Service.

SECTION.

12-30-304. Products — Purchase by state institutions.

12-30-305. Sales by director.

12-30-306. Purchases, expenditures, and sales — Compliance with laws.

SECTION.

12-30-307. Payment for food used by division.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-30-301. Farming and livestock activities.

(a) The Division of Correction shall make maximum utilization of the farm lands of the various institutions of the division through the use of modern agricultural machinery, equipment, and technology in producing crops and livestock for use in feeding prisoners and for sale on the market to produce income for the maintenance and operation of the institutions of the division.

(b) The Director of the Division of Correction, with the approval of the Board of Corrections, shall promulgate necessary rules for the operation of the farming and livestock activities of the various institutions of the division, the employment of personnel, the assignment of inmate labor, and other activities as may be reasonably necessary to accomplish the purposes as provided in this section.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 18; A.S.A. 1947, § 46-219.1; Acts 2019, No. 315, § 909; 2019, No. 910, § 823.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” and “division” for “department” throughout the section.

12-30-303. Cooperation of Cooperative Extension Service.

It shall be the duty of the University of Arkansas Cooperative Extension Service to cooperate with the Director of the Division of Correction to the end that proper crops may be planted to the best advantage and proper methods of soil treatment may be utilized and

proper methods of canning and preserving may be used to the best advantage.

History. Acts 1933, No. 30, § 23; Pope's Dig., § 12690; A.S.A. 1947, § 46-216; Acts 2019, No. 910, § 824.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction".

12-30-304. Products — Purchase by state institutions.

(a) It shall be the duty of the various state institutions to purchase, as far as possible, products grown or produced by the state upon its Division of Correction and other farms, giving the state preference wherever possible.

(b)(1) Sales shall be made at prevailing market prices and all proceeds thereof shall be deposited with the Treasurer of State to the credit of the Division of Correction Farm Fund.

(2) However, the Secretary of the Department of Finance and Administration, by proper bookkeeping entries, may charge the institution so purchasing and credit the Division of Correction account with such amount.

History. Acts 1933, No. 30, § 22; Pope's Dig., § 12667; A.S.A. 1947, § 46-219; Acts 2019, No. 910, § 3376.

Amendments. The 2019 amendment substituted "Division of Correction" for

"Department of Correction" in (a), (b)(1), and (b)(2); and substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (b)(2).

12-30-305. Sales by director.

(a) The Director of the Division of Correction, by and with the consent and approval of the Board of Corrections, shall make all sales of commodities and articles produced and offered for sale by the various penal institutions under his or her supervision.

(b) The director shall keep a complete and detailed record of all sales and shall immediately deposit all moneys received therefrom with the Treasurer of State to the credit of the Penal Institution Fund.

(c) The director shall give a bond to be approved by the board as the board may require for the performance of the duties imposed under this section.

History. Acts 1933, No. 30, § 35; Pope's Dig., § 12702; A.S.A. 1947, § 46-222; Acts 2019, No. 910, § 825.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a).

12-30-306. Purchases, expenditures, and sales — Compliance with laws.

(a) All purchases for or in behalf of the Division of Correction and its various institutions shall be in strict compliance with the state purchasing laws and applicable rules promulgated thereunder.

(b) All expenditures of funds appropriated for the division shall be in accordance with the General Accounting and Budgetary Procedures

Law, § 19-4-101 et seq., and other applicable fiscal laws of this state governing expenditure of state funds.

(c) All sales of farm products, livestock, or other products produced in connection with the agriculture and livestock activities at the respective institutions of the division shall be in accordance with the applicable laws of this state governing the advertising for bids and awarding of contracts for the sales.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 17; A.S.A. 1947, § 46-220.1; Acts 2019, No. 315, § 910; 2019, No. 910, § 826.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” in (a); and substituted “division” for “department” in (b) and (c).

12-30-307. Payment for food used by division.

(a) The Division of Correction may make payment from the Division of Correction Inmate Care and Custody Fund Account to the Division of Correction Farm Fund in an amount not to exceed fifty cents (50¢) on each dollar’s worth of food produced on the division farm for consumption in the Inmate Care and Custody Program.

(b) The division shall keep appropriate records reflecting farm production and the value of farm-produced products utilized in the Inmate Care and Custody Program and shall keep records of current market values in support of any such payments.

(c) In no event shall the amount received under this section, when combined with any loans forgiven under provisions of other laws, exceed the value of the farm products utilized by the Inmate Care and Custody Program.

History. Acts 1987, No. 953, § 25; 2019, No. 910, § 827.

Amendments. The 2019 amendment, in (a), substituted “Division of Correction” for “Department of Correction”, “Division of Correction Inmate Care and Custody Fund Account” for “Department of Correc-

tion Inmate Care and Custody Fund Account”, “Division of Correction Farm Fund” for “Department of Correction Farm Fund”, and “division” for “department”; and substituted “division” for “department” in (b).

SUBCHAPTER 4 — WORK-STUDY RELEASE

SECTION.

- 12-30-401. Work and rehabilitative programs — Work-release programs.
- 12-30-402. Establishment of new work-release centers.
- 12-30-403. Rules generally.

SECTION.

- 12-30-404. Inmates excepted from program.
- 12-30-405. Contracts for inmate labor.
- 12-30-406. Allocation of earnings — Inmate’s funds.
- 12-30-407. Housing of participants.

Effective Dates. Acts 2017, No. 444, § 2: Mar. 9, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Act 309 inmates are currently a valuable resource for local jails and political subdivisions; that Act 309 inmates should be available for use by local nonprofit organizations; and that this act is immediately necessary because a number of nonprofit entities can immediately benefit from the assistance of Act 309 inmates. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-30-401. Work and rehabilitative programs — Work-release programs.

(a) All inmates committed to the Division of Correction for institutional care shall be required to participate in the various work programs to which assigned and may be afforded vocational training and rehabilitative opportunities in accordance with rules and procedures therefor as promulgated by the Director of the Division of Correction with the approval of the Board of Corrections.

(b) The division may institute "work-release" programs under which the inmates selected to participate in the programs may be gainfully employed or attend school outside of the units maintained by the division, under rules promulgated by the director with the approval of the board.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1981, No. 58, § 2; 1983, No. 309, § 1; A.S.A. 1947, § 46-117; Acts 2019, No. 315, § 911; 2019, No. 910, § 828.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following

"rules" and made a similar change in (a) and (b).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" twice in (a); and substituted "division" for "department" twice in (b).

12-30-402. Establishment of new work-release centers.

(a) The Community Correction Revolving Fund may borrow from the Budget Stabilization Trust Fund for the establishment of new work-release centers for the Division of Correction.

(b) The loans shall be repaid by the end of the fiscal year in which the loans are made.

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| <p>History. Acts 1987, No. 953, § 19; 2005, No. 1962, § 50; 2019, No. 910, § 829.</p> | <p>Amendments. The 2019 amendment substituted “Division of Correction” for “Department of Correction” in (a).</p> |
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12-30-403. Rules generally.

The Board of Corrections and the Director of the Division of Correction will govern the administration of work-release programs with the promulgation of rules and procedures subject to the continuing review by the Governor, who shall have the right to revise and rescind any such rules and procedures.

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| <p>History. Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1981, No. 58, § 2; 1983, No. 440, § 1; 1983, No. 814, § 1; A.S.A. 1947, § 46-117; Acts 2019, No. 315, § 912.</p> | <p>Amendments. The 2019 amendment deleted “and regulations” following “Rules” in the section heading and made similar changes in the text.</p> |
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12-30-404. Inmates excepted from program.

- (a) No person shall be allowed to participate in any work-release program conducted by or for the Division of Correction if convicted of:
- (1) A capital offense;
 - (2) Murder in the first degree, § 5-10-102;
 - (3) Rape, § 5-14-103;
 - (4) Kidnapping, § 5-11-102; or
 - (5) Aggravated robbery a second or subsequent time, § 5-12-103.
- (b) However, this section shall not apply to persons participating in work-release programs on July 20, 1979.

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| <p>History. Acts 1979, No. 399, § 1; A.S.A. 1947, § 46-117.1; Acts 2019, No. 910, § 830.</p> | <p>substituted “Division of Correction” for “Department of Correction” in the introductory language of (a).</p> |
| <p>Amendments. The 2019 amendment</p> | |

12-30-405. Contracts for inmate labor:

- The Division of Correction may make contractual arrangements for use of inmate labor by the following prioritized list:
- (1) Other state departments, divisions, and agencies;
 - (2) Counties, cities, and school districts; and
 - (3) Civic organizations, other nonprofit organizations, and private citizens, including, but not limited to, those responsible for the preservation of natural resources or other public works.

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| <p>History. Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1981, No. 58, § 2; 1983, No. 309, § 1; 1983, No. 440, § 1; 1983, No. 814, § 1;</p> | <p>A.S.A. 1947, § 46-117; Acts 2019, No. 910, § 831.</p> |
| <p>Amendments. The 2019 amendment substituted “Division of Correction” for</p> | |

"Department of Correction" in the introductory language; and inserted "divisions" in (1).

12-30-406. Allocation of earnings — Inmate's funds.

(a) Under any work-release program, earnings by the inmate shall be paid directly to the Division of Correction and applied as follows:

(1) The division shall retain an amount to be established by the Director of the Division of Correction which will reasonably compensate the division for the cost of feeding, housing, and supervising the inmate;

(2) The division shall determine if the inmate has persons dependent upon him or her for their support and may remit to such persons that portion of the earnings which the director considers reasonable;

(3)(A) The division shall determine if the inmate has created victims of his or her criminal conduct who are entitled to restitution or reparations for physical injury or loss of or damage to property and may remit to the victim that portion of the earnings which the director considers reasonable.

(B) However, in no case shall the portion of the earnings remitted for restitution be in excess of twenty-five percent (25%) of the inmate's income remaining after deduction for the cost of care, custody, and family support provided for in subdivisions (a)(1) and (2) of this section.

(C) The names and addresses of victims and the amount of restitution to be paid shall be provided to the director by certificate of the trial court in which the inmate was convicted; and

(4) The balance shall be deposited to the account of the inmate.

(b) Inmates may be required to contribute to the support of their dependents who may be receiving public assistance during the period of their commitment if funds credited to them are adequate for that purpose provided that all inmates participating in the work-study release programs shall continue to be housed at a division institution.

(c) The division shall promulgate rules governing the possession of or use of money by inmates and may prohibit the possession of money by inmates and may establish a system for the custody of all funds belonging to inmates, for the balance of such fund period.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1981, No. 58, § 2; 1983, No. 309, § 1; 1983, No. 440, § 1; 1983, No. 814, § 1; A.S.A. 1947, § 46-117; Acts 2019, No. 315, § 913.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c).

12-30-407. Housing of participants.

(a)(1)(A) The Board of Corrections may promulgate rules to allow the proper classification of inmates to be released to the county sheriffs of approved jail facilities or chiefs of police or other authorized law

enforcement officers of city-operated approved jail facilities or community correction centers outside the Division of Correction.

(B)(i) Inmates shall be interviewed to develop a classification of each inmate's skills, work experiences, job background, and education.

(ii) Inmates shall work at jobs under this section that directly benefit approved jail facilities or a political subdivision, or may assist a political subdivision in supporting or working with a nonprofit organization with a chapter, committee, or other governing body that is based in the county, that are related to a particular inmate's background classification, and in which the inmates are under supervision at all times.

(2)(A)(i) County sheriffs, chiefs of police, or other authorized law enforcement officers of approved jail facilities may request assignment of inmates to their approved jail facilities to perform particular jobs for the approved jail facilities or for a political subdivision, or to assist a political subdivision in supporting or working with a nonprofit organization with a chapter, committee, or other governing body that is based in the county, when the jobs or assistance are in a particular area of need of the approved jail facilities, political subdivision, or nonprofit organization with a chapter, committee, or other governing body that is based in the county.

(ii) The division shall review the requests and shall submit a list of inmates with appropriate skills or backgrounds for the particular job needs of the approved jail facility, political subdivision, or nonprofit organization with a chapter, committee, or other governing body that is based in the county that is being provided assistance by a political subdivision, in accordance with the division's classification of inmates' skills and backgrounds.

(iii) County sheriffs, chiefs of police, or other authorized law enforcement officers shall choose inmates from the submitted list who are appropriate for the needs of the approved jail facilities, political subdivision, or nonprofit organization with a chapter, committee, or other governing body that is based in the county that is being provided assistance by a political subdivision.

(B) County sheriffs, chiefs of police, or other authorized law enforcement officers of approved jail facilities shall not request the assignment of a particular inmate to an approved jail facility, political subdivision, or nonprofit organization with a chapter, committee, or other governing body that is based in the county, and may refuse the assignment of a particular inmate.

(3)(A) An inmate shall not be released to a county sheriff, chief of police, or other authorized law enforcement officer of an approved jail facility under this section until notification of the release is first sent to the county sheriff of the county from which the inmate was tried and convicted, the prosecuting attorney's office that prosecuted the inmate, and, upon a written request, to the victim or victim's family.

(B) Notification of the victim or victim's family shall be done by mail to the last known address supplied to the division in accordance with division policies.

(4)(A) Inmates released under this section shall be entitled to credit on their sentences under the meritorious classification system of the division.

(B) However, no inmate shall be eligible to be released to the county sheriff, chief of police, or other authorized law enforcement officer of an approved jail facility unless the inmate is within forty-five (45) months of his or her first parole eligibility date or his or her first post prison transfer eligibility date, unless:

(i) The inmate is returning to the county from which he or she was tried and convicted and the victim or victim's immediate family, if residing in the county from which the inmate was tried and convicted, has been notified of the inmate's return; or

(ii)(a) If the inmate is released to a county other than a county from which he or she was tried and convicted, the county sheriff of the county from which he or she was tried and convicted shall be notified as provided in subdivision (a)(3)(A) of this section.

(b)(1) Unless the county sheriff responds within fifteen (15) days of notification that he or she disapproves of the transfer, the inmate may be transferred as provided in this section.

(2) If the county sheriff disapproves of the transfer and an inmate becomes eligible to be released again, the notifications required by subdivision (a)(3) of this section shall be made again.

(b)(1) The number of persons on prerelease, work-release, and other rehabilitative programs that may be housed at the Arkansas Health Center shall not exceed a number appropriate to maintain the security and good order of the center.

(2) However, with the approval of the Department of Human Services State Institutional System Board and the Administrator of the Arkansas Health Center, a maximum number of persons on prerelease, work-release, and other rehabilitative programs to be housed at the center may be established by the Board of Corrections.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1977, No. 948, § 20; 1981, No. 58, § 2; 1983, No. 309, §§ 1, 2; 1983, No. 440, § 1; 1983, No. 814, § 1; A.S.A. 1947, §§ 46-117, 46-117.2, 46-117.3; Acts 1991, No. 287, § 1; 1991, No. 1112, § 1; 1993, No. 532, § 8; 1993, No. 550, § 8; 1995, No. 1188, §§ 1, 2; 1997, No. 115, § 1; 1997, No. 936, § 1; 1997, No. 1271, § 1; 2001, No. 152, § 1; 2001, No. 1402, § 1; 2011, No. 183, § 1; 2017, No. 444, § 1; 2019, No. 910, §§ 832-835.

Amendments. The 2017 amendment deleted "and regulations" following "rules"

in (a)(1)(A); rewrote (a)(1)(B)(ii) and (a)(2); in (a)(3)(A), substituted "a county sheriff, chief of police, or other authorized law enforcement officer of an approved jail facility under this section" for "approved jail facilities" and "that prosecuted" for "who convicted"; substituted "released under this section" for "so released" in (a)(4)(A); substituted "forty-five (45) months" for "thirty (30) months" in the introductory language of (a)(4)(B); and deleted (c).

The 2019 amendment substituted "Division of Correction" for "Department of Correction" and similar language throughout (a).

SUBCHAPTER 5 — PRIVATIZED PRISON-MADE GOODS

SECTION.
12-30-502. Transportation and sale of goods.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-30-502. Transportation and sale of goods.

- (a) Goods produced in whole or in part by inmates of the Division of Correction or the Division of Community Correction participating in private sector prison industry enhancement programs may be transported and sold in the same manner as goods produced by free persons, provided that the inmates participating in the private sector prison industry enhancement programs are paid at least the minimum wage prescribed by state law.
- (b) The minimum wage requirement does not apply to hobby and craft items produced by the inmates on their own time and with their own resources or to inmates working in any other prison industries program.

History. Acts 1995, No. 106, § 1; 2015, No. 144, § 1; 2019, No. 910, § 836.

Amendments. The 2019 amendment substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction” in (a).

CHAPTER 32

TREATMENT OF FEMALE INMATES OR DETAINEES

SECTION.
12-32-101. Definitions.
12-32-102. Restraint of pregnant inmate or detainee.

SECTION.
12-32-103. Necessary female prenatal nutrition and hygiene products required.

12-32-101. Definitions.

As used in this chapter:

(1) "Correctional or detention facility" means:

(A) A local or state correctional facility or detention facility that has the power to detain or restrain a person under the laws of the state, including a city jail, county jail, or facility operated by the Division of Correction or the Division of Community Correction; or

(B) A post-incarceration residential reentry facility designed to house a person on parole;

(2) "Detainee" includes a person detained under the immigration laws of the United States;

(3) "Inmate" means any person incarcerated in a correctional or detention facility for any reason;

(4) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

(5) "Post-partum" means, as determined by the physician of the inmate or detainee, the thirty-day period following delivery of a child; and

(6)(A) "Restraints" means a physical restraint or mechanical device used to control the movement of an inmate's or detainee's body or limbs, including without limitation:

(i) Flex cuffs;

(ii) Soft restraints;

(iii) Hard metal handcuffs;

(iv) A black box;

(v) Chubb cuffs;

(vi) Leg irons;

(vii) Belly chains;

(viii) A security tether or chain;

(ix) A convex shield; and

(x) Restraints connecting more than one (1) inmate or detainee.

(B) "Restraints" does not include a door to a room.

History. Acts 2019, No. 566, § 1.

12-32-102. Restraint of pregnant inmate or detainee.

(a) A correctional or detention facility shall not place an inmate or detainee verified to be pregnant, in labor, or in post-partum recovery in restraints unless:

(1) The correctional or detention facility makes a reasonable and individualized determination that the inmate or detainee presents a substantial flight risk; or

(2) An extraordinary medical or security circumstance dictates that the inmate or detainee be restrained to:

(A) Ensure the safety and security of:

(i) The inmate, detainee, or child;

(ii) The staff of the correctional or detention facility, or medical facility;

(iii) Other inmates or detainees; or

(iv) The public; or

(B) Prevent the risk of escape by the inmate or detainee that cannot be reasonably minimized through a safer method than restraints.

(b)(1) If the correctional or detention facility determines that the inmate or detainee is required to be restrained under subsection (a) of this section, the restraints shall be removed if a physician, nurse, or other health professional requests that the inmate or detainee not be restrained.

(2)(A) The physician, nurse, or other health professional providing inmate or detainee obstetric care shall have final decision-making authority on the use of restraints while the inmate or detainee is in labor or delivery.

(B) If the inmate or detainee is not under the care of a physician, nurse, or other health professional, the official at the correctional or detention facility primarily responsible for medical care of inmates or detainees shall have final decision-making authority on the use of restraints and shall consult with a physician, nurse, or other health-care provider who specializes in obstetrics about the use of restraints on the inmate or detainee.

(c) If restraints are used on a pregnant inmate or detainee under subsection (a) of this section:

(1)(A) The type of restraints shall be the least restrictive type necessary, and the restraints shall be applied in the least restrictive manner necessary.

(B) Leg or waist restraints shall not be used on any inmate or detainee who is in labor.

(C) Leg restraints shall not be used on a pregnant inmate who is not in a wheelchair, bed, or gurney;

(2) The restraints shall always be forward-facing, designed to restrain the person's hands in front of the person to protect the person and others;

(3) Only soft restraints may be used; and

(4)(A) The correctional or detention facility shall make written findings within ten (10) days regarding the substantial flight risk of that inmate or detainee or other extraordinary medical or security circumstance that dictated the inmate or detainee be restrained to ensure the safety and security of the inmate or detainee, the child, staff of the correctional or detention facility, or medical facility, other inmates or detainees, or the public.

(B) The written findings under subdivision (c)(4)(A) of this section shall be maintained by the correctional or detention facility for at least five (5) years and be made available for public inspection, except that information identifying any inmate or detainee or that could lead to the identification of the inmate or detainee shall not be made public.

(d) If restraints are used during labor, the Division of Correction or the Division of Community Correction, as applicable, shall report the use of restraints during labor to the Board of Corrections and to the Attorney General.

History. Acts 2019, No. 566, § 1.

12-32-103. Necessary female prenatal nutrition and hygiene products required.

(a) A correctional or detention facility shall establish a policy for providing:

(1) Necessary prenatal vitamins and nutrition for pregnant inmates and detainees;

(2) A necessary number of hygiene products for female inmates and detainees;

(3) A necessary number of undergarments for female inmates and detainees;

(4) A lower bunk for a pregnant inmate or detainee; and

(5) Unless otherwise provided for by the correctional or detention facility, access for a pregnant inmate or detainee to nonprofit educational programming, such as prenatal care, pregnancy-specific hygiene, and parenting classes.

(b) A policy under this section may be approved annually by the Charitable, Penal and Correctional Institutions Subcommittee of the Legislative Council.

History. Acts 2019, No. 566, § 1.

CHAPTER 41

LOCAL CORRECTIONAL FACILITIES

SUBCHAPTER.

1. GENERAL PROVISIONS.

5. COUNTY JAILS.

7. JAIL BOARDS — REVENUE BONDS.

8. JUVENILE DETENTION FACILITIES COOPERATIVE DEVELOPMENT AND OPERATIONS ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

12-41-105. Commissions from prisoner telephone services and profits from prisoner commissary services.

12-41-107. Medical services billing to a local correctional facility — Definitions.

SECTION.

12-41-108. Behavioral health and risk screening tool — Database entry.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-41-105. Commissions from prisoner telephone services and profits from prisoner commissary services.

(a)(1) Commissions derived from prisoner telephone services and profits earned from prisoner commissary services provided in the various county and regional detention facilities in the state shall be deposited with the county treasurer of the county in which the county or regional detention facility is located, and the county treasurer shall credit the funds to the county sheriff's office fund.

(2)(A) The county sheriff's office fund is an agency fund defined by the County Financial Management System as a fund used to account for funds held by the county treasurer as an agent for a governmental unit until transferred by check or county court order to the county sheriff or other governmental unit for the intended uses of the funds.

(B) The transfer of funds to the county sheriff or other governmental unit under this subsection is not subject to an appropriation by the quorum court or to the county claims process.

(3) Arkansas Legislative Audit shall review actions described in this subsection for substantial compliance with this section.

(b)(1) Of the commissions and profits deposited into the county sheriff's office fund in each county under subsection (a) of this section, one hundred percent (100%) shall be credited to the county sheriff's office communications facility and equipment fund under § 21-6-307.

(2) Each county sheriff's office shall allocate for the maintenance and operation of the county jail up to seventy-five percent (75%) of the commissions and profits deposited into the county sheriff's office communications facility and equipment fund.

(c) This section does not apply to funds derived from prisoner telephone services or prisoner commissary services provided in Division of Correction facilities or Division of Community Correction facilities or in municipally owned detention facilities or in county detention facilities in counties with a population of one hundred seventy-five thousand (175,000) or more according to the latest federal decennial census.

History. Acts 1995, No. 996, §§ 1, 2; 2015, No. 741, § 1; 2017, No. 250, § 26; 1997, No. 520, § 1; 1997, No. 1287, § 1; 2019, No. 372, § 1; 2019, No. 910, § 837.

Amendments. The 2017 amendment inserted “county or regional” before “detention facility” in (a)(1); in (a)(2)(B), substituted “The county sheriff’s office fund and the transfer of funds under subdivision (a)(2)(A) of this section are not” for “As an agency fund, the transfer of funds is not”; and, in (a)(3), inserted “actions described in this subsection”.

The 2019 amendment by No. 372 substituted “services and profits from” for “service profits and” in the section heading; inserted “or other governmental unit”

in (a)(2)(A); and substituted “The transfer of funds to the county sheriff or other governmental unit under this subsection is not subject” for “The county sheriff’s office fund and the transfer of funds under subdivision (a)(2)(A) of this section are not subject” in (a)(2)(B).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction” in (c).

12-41-107. Medical services billing to a local correctional facility — Definitions.

(a) As used in this section:

(1) “Healthcare professional” means an individual or entity that is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession or as a function of an entity’s administration of the practice of medicine;

(2) “Local correctional facility” means a county jail, a city jail, regional jail, criminal justice center, or county house of correction that is not operated by the Division of Correction, the Division of Community Correction, or a federal correctional agency; and

(3) “Medicaid reimbursement rate” means the prevailing cost paid by the Arkansas Medicaid Program for a particular medical service or treatment established by the Division of Medical Services in the Arkansas Medicaid Program fee schedules for a particular medical service, treatment, or medical code.

(b) A healthcare professional that provides medical service or treatment to a local correctional facility under this chapter for the benefit of an inmate housed in a local correctional facility for which the local correctional facility is responsible for payment shall not charge the local correctional facility more than the Medicaid reimbursement rate for the same or similar medical service or treatment.

History. Acts 2015, No. 895, § 14; 2019, No. 910, § 838.

Amendments. The 2019 amendment substituted “Division of Correction” for

“Department of Correction” and “Division of Community Correction” for “Department of Community Correction” in (a)(2).

12-41-108. Behavioral health and risk screening tool — Database entry.

A local correctional facility is encouraged to:

(1) Adopt independently, or in collaboration with other local correctional facilities or nongovernmental law enforcement entities, a screening tool designed to screen inmates or other detainees for a behavioral health impairment, substance abuse issues, and criminogenic risk; and

(2) Utilize the database maintained by the Arkansas Crime Information Center under § 12-12-219 concerning entry of data and information collected from inmates at a local correctional facility.

History. Acts 2017, No. 423, § 12.

SUBCHAPTER 5 — COUNTY JAILS

SECTION.

12-41-505. Expenses and support.

12-41-505. Expenses and support.

(a)(1) Every person who is committed to the common jail of the county by lawful authority for any criminal offense or misdemeanor, if he or she is convicted, shall pay the expenses in carrying him or her to jail and also for his or her support from the day of his or her initial incarceration for the whole time he or she remains there.

(2) The expenses which accrue shall be paid as directed in the act regulating criminal proceedings.

(b)(1) A person convicted of a felony or a Class A misdemeanor shall be assessed a booking and administration fee of forty dollars (\$40.00).

(2)(A) The booking and administration fee described in subdivision (b)(1) of this section shall be assessed upon the conviction of a defendant and included in the judgment of conviction entered by the court.

(B) If a court suspends imposition of sentence on a defendant or places him or her on probation and does not enter a judgment of conviction, the court shall impose the booking and administration fee as a cost.

(3) The booking and administration fee assessed under subdivision (b)(1) of this section shall be deposited into the county treasury by the collecting officer to be credited and used in the following manner:

(A) Ten percent (10%) of each booking and administration fee collected shall be deposited into or credited to the county sheriff's office fund described in § 12-41-105 by the county treasurer, and then transferred by check on a monthly basis using a uniform remittance form provided by the Treasurer of State, to the Treasurer of State for the Law Enforcement Training Fund; and

(B) The remaining funds shall be deposited into or credited to a special revenue fund and used for the maintenance, operation, and capital expenditures of a county jail or regional detention facility and for certificate pay for law enforcement and jailer personnel.

(c) The property of the person shall be subject to the payment of the expenses and the booking and administration fee.

History. Rev. Stat., ch. 81, §§ 5, 7; C. & M. Dig., §§ 6209, 6212; Pope's Dig., §§ 8172, 8175; A.S.A. 1947, §§ 46-404, 46-407; Acts 1999, No. 1128, § 1; 2007, No. 117, § 1; 2019, No. 372, § 2.

Amendments. The 2019 amendment,

in the introductory language of (a)(1), substituted “is committed” for “may be committed”, and substituted “is convicted” for “shall be convicted”; substituted “forty dollars (\$40.00)” for “twenty dollars (\$20.00)” in (b)(1); and rewrote (b)(3).

12-41-506. Expenses of municipal prisoners held in county jails.

CASE NOTES

ANALYSIS

Construction.
Offset.
Res Judicata.

Construction.

In a dispute between a city and a county over the city’s payment to the county of fees for incarcerating offenders in the county jail who were arrested by city police, the trial court erred in its interpretation of the term “prisoners of municipalities” in this section as limited to persons detained for violations of municipal ordinances; instead, the term includes offenders city police arrest and deliver to the county jail from intake until (a) charging on a felony, (b) sentencing on a misdemeanor, or (c) release on a municipal-ordinance violation. *Miss. Cty. v. City of Blytheville*, 2018 Ark. 50, 538 S.W.3d 822 (2018).

Offset.

In a dispute between a city and a county over the city’s payment to the county of fees for incarcerating offenders in the

county jail who were arrested by city police, the city could claim no offset of jail taxes paid by city residents against fees the city owed the county, because (1) the city had no standing, as the city did not show it was injured by paying the tax, and entities or citizens who paid the tax were not joined, and (2) a credit for a county tax paid by city residents, who were also county residents, was illogical and statutorily unauthorized. *Miss. Cty. v. City of Blytheville*, 2018 Ark. 50, 538 S.W.3d 822 (2018).

Res Judicata.

In a dispute between a city and a county over the city’s payment to the county of fees for incarcerating offenders in the county jail who were arrested by city police, res judicata did not bar the trial court’s definition of the term “prisoners of municipalities” in this section, because (1) the interpretation did not bind a city that was not a party to prior litigation, and (2) the public interest exception to res judicata was applicable. *Miss. Cty. v. City of Blytheville*, 2018 Ark. 50, 538 S.W.3d 822 (2018).

SUBCHAPTER 7 — JAIL BOARDS — REVENUE BONDS

SECTION.

12-41-716. Use of board jail fund for su-

pervision and transportation of inmates.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-41-716. Use of board jail fund for supervision and transportation of inmates.

In addition to any other purposes for which funds in a county jail board jail fund, municipal jail board jail fund, or public instrumentality jail board jail fund may be used, the funds may be used for the transportation and supervision of inmates assigned to outside work projects or for transporting inmates to a Division of Correction facility, as determined by the board.

History. Acts 1997, No. 643, § 1; 2003, substituted “Division of Correction” for No. 1772, § 1; 2019, No. 910, § 839. “Department of Correction”.

Amendments. The 2019 amendment

**SUBCHAPTER 8 — JUVENILE DETENTION FACILITIES COOPERATIVE
DEVELOPMENT AND OPERATIONS ACT****SECTION.**

12-41-806. Matching requirements.

12-41-807. Operating fund account.

12-41-806. Matching requirements.

(a)(1) Grant and loan funds shall only be awarded under this subchapter upon submission of evidence of the ability to provide an amount of local public or private dollars, or both, equal to or greater than one-third ($\frac{1}{3}$) of the state’s capital grant contribution to any project.

(2) In no event shall the state capital grant contribution to any project authorized under this subchapter exceed the sum of one hundred fifty thousand dollars (\$150,000).

(b) Any revolving loan funds utilized in meeting the total cost of any project authorized under this subchapter shall be interest free and shall have terms not to exceed ten (10) years.

(c) Any award of funds under this section shall be subject to review and approval by the Division of Youth Services, which shall promulgate rules to effectuate the provisions of this section.

History. Acts 1989, No. 486, § 6; 2019, deleted “and regulations” following “rules” No. 315, § 914. in (c).

Amendments. The 2019 amendment

12-41-807. Operating fund account.

(a) There is hereby established an operating fund account not to exceed the amount of five hundred thousand dollars (\$500,000) per annum, the express purpose of which is to provide a supplement to the local operations fund for the continuing operation of secure facilities for juveniles as alternatives to placement of juveniles in adult detention facilities.

(b)(1) The allowable uses of the operating fund account shall be to provide up to but not to exceed one-third ($\frac{1}{3}$) of the annual operations costs for a juvenile detention facility as authorized in this subchapter.

(2) The funds shall be applied for the continuing operations of juvenile detention facilities as authorized in this subchapter together with such other general funds, if any, as may be provided by any governing body individually or in combination with each other, as established for the purposes authorized in this subchapter.

(c) The Division of Youth Services shall promulgate rules to effectuate the provisions of this section.

History. Acts 1989, No. 486, § 7; 2019, No. 315, § 915. deleted “and regulations” following “rules” in (c).

Amendments. The 2019 amendment

CHAPTER 42

LABOR OF COUNTY AND CITY PRISONERS

SECTION.

12-42-102. Penalties.

12-42-102. Penalties.

A person who uses the work of a prisoner or enters into a contract to lease and use the work of a prisoner convicted of a misdemeanor in violation of §§ 12-42-104 — 12-42-107 upon conviction is guilty of an unclassified misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) and may be imprisoned not exceeding ninety (90) days.

History. Acts 1939, No. 118, § 7; A.S.A. 1947, § 46-512; Acts 2017, No. 845, § 5. deleted the (a) and (b) designations; and rewrote the section to clarify the language.

Amendments. The 2017 amendment

CHAPTER 50

CORRECTIONS COOPERATIVE ENDEAVORS AND PRIVATE MANAGEMENT ACT

SECTION.

12-50-105. Regional correctional commissions.

12-50-106. Contracts for correctional facilities.

SECTION.

12-50-109. Financing — Contracts with Arkansas Development Finance Authority.

12-50-111. Private correctional facilities.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two

uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of

the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

12-50-105. Regional correctional commissions.

(a) Political subdivisions may individually, or in combination with each other, contract with the state through the Division of Correction or with prison contractors for the financing, acquisition, construction, and operation of facilities for the housing of inmates.

(b)(1) In the event two (2) or more counties jointly enter into an agreement with the state or with a prison contractor, they shall form a regional corrections commission, which shall be composed of the county judge of each county or his or her or her designee.

(2) In the case of a commission having an even number of parties, the appointed representatives of the parties to the commission shall select an additional person, who is acceptable to all representatives to the commission, to serve on the commission.

(3) The members of the commission shall serve terms of three (3) years' duration, shall be eligible for reappointment, and may be removed only for cause by the quorum court of the county which they represent.

(4) In the event of a vacancy other than by expiration of term, the vacancy shall be filled by the governing body of the county of the representative unable to complete his or her term.

(c)(1) In the event that any city or town, with or without one (1) or more counties, enters into an agreement with the state or with a prison contractor, the chief executive officer of each city or town or his or her designee shall serve on the commission.

(2) In the case of a commission having an even number of parties, the appointed representatives of the parties to the commission shall select an additional person, who is acceptable to all other members of the commission, to serve on the commission.

(3) The members of the commission shall serve terms of three (3) years' duration, shall be eligible for reappointment, and may be removed only for cause by the governing body of the city or town which they represent.

(4) In the event of a vacancy other than by expiration of term, the vacancy shall be filled by the governing body of the political subdivision of the representative unable to complete his or her term.

(d) In any contract for correctional services entered into pursuant to this chapter by a regional corrections commission, the commission members shall submit to the governing body of each political subdivision for approval the following contract terms:

- (1) The fee to be paid by each political subdivision;
- (2) The minimum financial guarantees of each political subdivision;
- and
- (3) The method of billing.

History. Acts 1987, No. 427, § 4; 2019, substituted "Division of Correction" for No. 910, § 840. "Department of Correction" in (a).

Amendments. The 2019 amendment

12-50-106. Contracts for correctional facilities.

(a) The Division of Correction, any regional corrections commission, and any political subdivision are authorized to enter into contracts with each other and with prison contractors for the financing, acquiring, constructing, and operating of facilities.

(b) Any contract for the financing, acquiring, constructing, or operating of facilities between the division and a prison contractor shall be approved by the Board of Corrections, subject to the advice and consent of the Legislative Council.

(c) Contracts entered into under the terms of this chapter shall be negotiated with the firm found most qualified. However, no contract for correctional services may be entered into unless the private contractor demonstrates that it has:

- (1) The qualifications, experience, and management personnel necessary to carry out the terms of the contract;
- (2) The financial strength and ability to provide indemnification for liability arising from large prison management projects;
- (3) Evidence of past performance of similar contracts; and
- (4) The ability to comply with applicable court orders and correctional standards.

(d) Contracts awarded under this section, including contracts for the provision of correctional services or for the lease or use of public lands or buildings for use in the operation of state or local facilities, may be entered into for a period of up to twenty (20) years, subject to the requirement for annual appropriation of funds by each political subdivision and subject to the requirement of annual appropriations by the state.

(e) Contracts awarded under the provisions of this section at a minimum shall comply with the following:

- (1) Provide for internal and perimeter security to protect the public, employees, and inmates;
- (2) Provide inmates with work or training opportunities while incarcerated. However, the contractor shall not benefit financially from the labor of inmates;
- (3) Impose discipline on inmates only in accordance with applicable rules and procedures; and
- (4) Provide proper food, clothing, housing, and medical care for inmates.

(f) No contract for correctional services shall be entered into unless the following requirements are met:

(1) The contractor provides audited financial statements for the previous five (5) years, or for each of the years the contractor has been in operation, if fewer than five (5) years and provides other financial information as requested; and

(2)(A) The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims.

(B) The indemnification plan shall be adequate to protect the state, political subdivisions, and public officials, including county sheriffs and chiefs of police, from all claims and losses incurred as a result of the contract.

(C) Nothing in this section is intended to deprive a prison contractor, the state, or a political subdivision of the benefits of any law limiting exposure to liability or setting a limit on damages.

History. Acts 1987, No. 427, § 5; 2017, No. 250, § 27; 2019, No. 910, § 841.

Amendments. The 2017 amendment, in (d), deleted “the provisions of” before “this section” and substituted “annual appropriations” for “biennial appropriations”.

The 2019 amendment substituted “Division of Correction” for “Department of Correction” in (a); and substituted “division” for “department” in (b).

12-50-109. Financing — Contracts with Arkansas Development Finance Authority.

(a)(1) The Board of Corrections and any regional corrections commission may cooperate and contract with the Arkansas Development Finance Authority to provide for the payment of the principal of, premium, if any, interest on, and trustee’s and paying agent’s fees in connection with bonds issued to finance the acquisition, construction, and operation of prison facilities authorized under this chapter to be secured by a lien on and pledge of one (1) or more of the following:

(A) All revenues derived from payments to be made by the Division of Correction for the housing of prisoners;

(B) All revenues derived from payments to be made by political subdivisions for the housing of prisoners; or

(C) Any other revenues authorized by the General Assembly or the governing body of any political subdivision.

(2)(A) Any documents relating to a pledge under subdivision (a)(1) of this section shall state that the pledge is subject to annual appropriation by the governing body or annual appropriation of the General Assembly, respectively.

(B) It is not necessary to the perfection of the lien and pledge for those purposes that the trustee in connection with the bond issue or the holders of the bonds take possession of the collateral security.

(b) In addition to any other approved method of financing, counties may utilize the provisions of the County Jail Revenue Bond Act of 1981, § 12-41-601 et seq., as a permissible means of financing correctional facilities to be used pursuant to the contracts entered into under the provisions of this chapter.

History. Acts 1987, No. 427, § 9; 2017, No. 250, § 28; 2019, No. 910, § 842.

Amendments. The 2017 amendment, in (a)(1), substituted “may” for “are authorized and empowered to”; in (a)(2)(A), substituted “a pledge under subdivision (a)(1) of this section” for “those pledges” and

“annual” for “biennial” preceding “appropriation of the General Assembly”; and, in (a)(2)(B), substituted “It is not” for “It shall not be”.

The 2019 amendment substituted “Division of Correction” for “Department of Correction” in (a)(1)(A).

12-50-111. Private correctional facilities.

(a)(1) No private correctional facility in which inmates committed to the Division of Correction, out-of-state inmates, or federal inmates are to be housed shall be constructed nor shall any facility be renovated for the purpose of creating a private correctional facility in which inmates committed to the division, out-of-state inmates, or federal inmates are to be housed within the state without review and approval by the Board of Corrections and review and approval by the Legislative Council.

(2) Review of requests for construction at a minimum shall include:

(A) Consideration of the location, design, security level, and financing of the facility; and

(B) The nature of the inmates to be housed in the facility.

(b)(1) Except as provided in subsection (e) of this section, no facility located within this state, except a facility operated by the United States Bureau of Prisons, may house out-of-state or federal inmates without approval of the board.

(2) Review of requests to house such inmates may include, among other factors, consideration of the design and security level of the facility and the nature of the inmates to be housed in the facility.

(3) Approval must be obtained at least annually.

(c)(1)(A) Except as provided in subsection (e) of this section, no facility located within this state, except a facility operated by the United States Bureau of Prisons, may house out-of-state or federal inmates unless the board has certified that the state does not need some or all of the capacity of the facility for state inmates.

(B) Such certification shall be obtained at least annually.

(2) The board shall also certify the custody levels of any facility housing out-of-state or federal inmates.

(d) The board, in its discretion, may declare an emergency and waive the provisions of subsection (a) of this section to make use of available space for housing state inmates.

(e) Subsections (b) and (c) of this section shall not be construed to prohibit the temporary detention in this state of any out-of-state or federal inmate transported to this state for the purpose of appearing in court or any suspected alien detained by authority of the United States Department of Homeland Security, nor shall subsections (b) and (c) of this section be construed to alter or affect the operation of any interstate compact or agreement between this state or any other state or the federal government regarding the detention and housing of inmates.

History. Acts 1999, No. 380, § 1; 2019, substituted “Division of Correction” for No. 910, § 843. “Department of Correction” twice in (a)(1).

Amendments. The 2019 amendment

CHAPTER 51

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISION

SUBCHAPTER.

1. GENERAL PROVISIONS.

9. RESPONSIBLE AGENCIES.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

12-51-104. The state council.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

12-51-104. The state council.

(a) An Arkansas State Council for the Interstate Commission for Adult Offender Supervision is created, which shall consist of the following members:

(1) One (1) nonelected person, chosen from a list of five (5) names submitted by the Director of the Division of Community Correction, who will act as the representative of the legislative branch of government, to be appointed by the President Pro Tempore of the Senate;

(2) One (1) representative of the judicial branch of government, who is not an acting judge, appointed by the Governor;

(3) The members of the Board of Corrections, who will act as representatives of the executive branch of government, appointed by the Governor;

(4) One (1) representative from a victims group appointed by the Governor; and

(5) The Director of the Division of Community Correction or his or her designee who, in addition to serving as a member of the council,

shall be appointed by the Governor as the compact administrator for the state.

(b) The council shall appoint the compact administrator as the Arkansas commissioner to the interstate commission, who shall serve on the interstate commission in such capacity under or pursuant to the applicable law of this state.

(c) The council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by the council, including development of policy concerning operations and procedures of the compact within this state.

History. Acts 2001, No. 253, § 1; 2005, No. 1153, § 1; 2017, No. 240, § 1; 2019, No. 910, §§ 844, 845.

Amendments. The 2017 amendment inserted “or his or her designee” in (a)(5).

The 2019 amendment substituted “Division of Community Correction” for “Department of Community Correction” in (a)(1) and (a)(5).

SUBCHAPTER 9 — RESPONSIBLE AGENCIES

SECTION.

12-51-901. Responsible agencies.

12-51-901. Responsible agencies.

A fine, fee, or cost that may be levied against the state under the interstate compact under this chapter shall be paid by the entity that either failed to meet the obligation or responsibility of the interstate compact or failed to comply with a bylaw or rule of the Interstate Commission for Adult Offender Supervision, to the extent permitted by the interstate compact.

History. Acts 2019, No. 134, § 1.

